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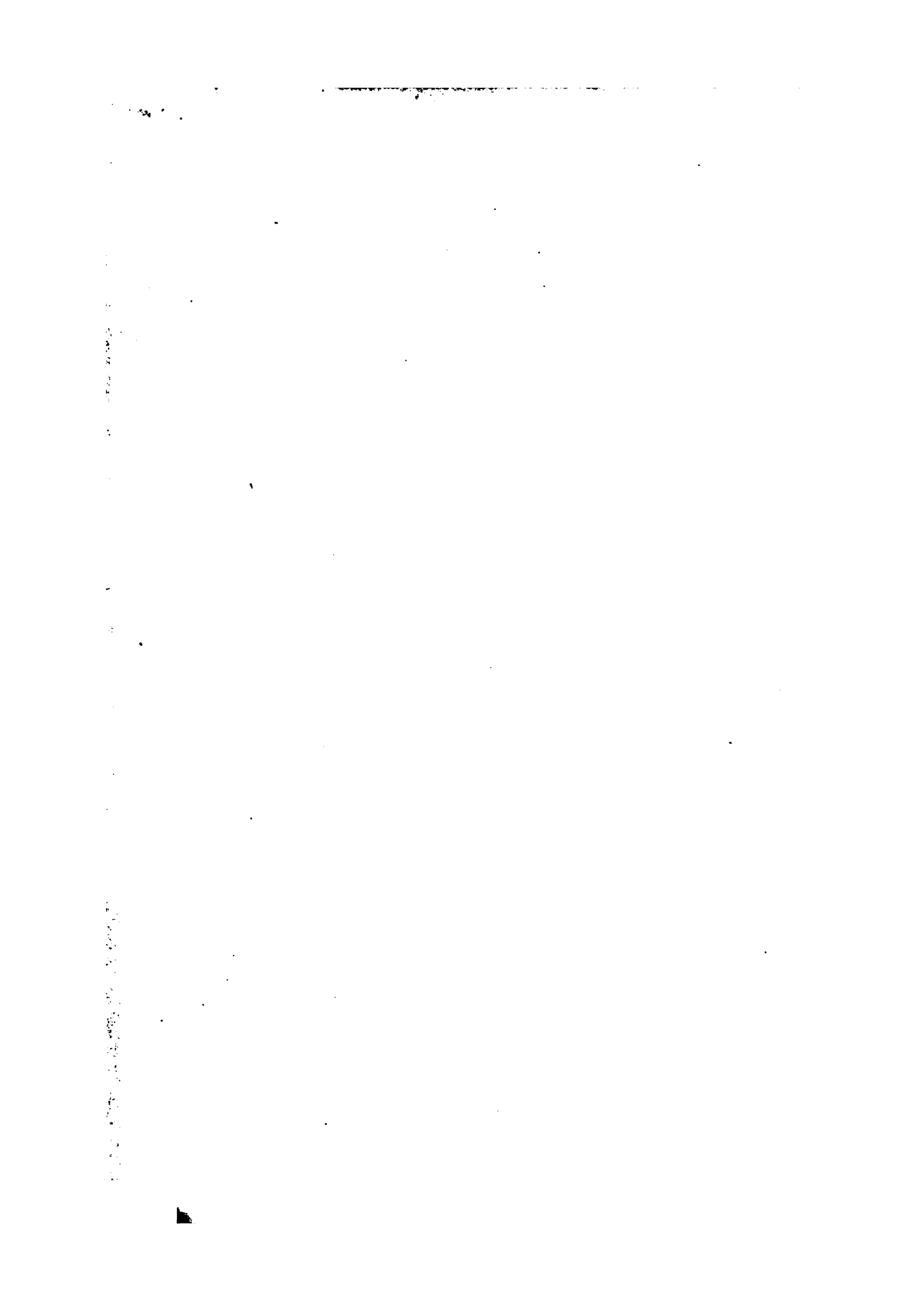
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PUBLIC LAND LAWS,

PASSED BY CONGRESS

FROM MARCH 4, 1869, TO MARCH 3, 1875.

WITH THE

IMPORTANT DECISIONS

OF THE

SECRETARY OF THE INTERIOR, AND
COMMISSIONER OF THE GENERAL LAND OFFICE,

THE OPINIONS

OF THE ASSISTANT ATTORNEY GENERAL, AND

THE INSTRUCTIONS

ISSUED FROM THE GENERAL LAND-OFFICE TO THE SURVEYORS
GENERAL AND REGISTERS AND RECEIVERS
DURING THE SAME PERIOD.

BY

HENRY N. COPP.

GENERAL LAND OFFICE,

Editor of Copp's U. S. Mining Decisions, and Proprietor of Copp's Land-Owner.

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INTRODUCTION.

The many radical changes in the laws of Congress, the decisions of the Interior Department and the instructions of the General Land-Office during the past five years, have created an urgent demand for a reliable authority on public Land Law. In seeking to furnish such an authority, this question presented itself: Shall the proposed work include all that is valuable since 1838, the date of the official compilation, or resume the subject at 1860, where Lester's first volume left it, or embrace only the laws, instructions and decisions promulgated since 1870, beyond which year Zabriskie and Lester's second volume do not go? Owing to the mass of valuable materials accumulated since 1870, it was finally determined to include only new matter, rather than what was already published and otherwise readily obtainable. The third course is the one herein pursued.

DESIGN OF THE WORK.

This work resumes the subject where it was left by previous compilations in 1870, and brings it down to April, 1875, the beginning of the second volume of Copp's Land Owner, a monthly publication. Owing to their importance several circulars and decisions of a later date have been included, and a few instructions issued prior to 1870 have been added to render certain subdivisions of the book more complete. All branches of the public land system are presented, except mining claims, which are made the subject of a separate volume.

The work is divided into three parts. 1st, The Revised Statutes; 2d, Land Laws; 3d, Decisions, Opinions and Instructions.

THE FIRST PART—REVISED STATUTES—

includes the revision relating to the General Land-Office and the public lands, and in order to show the date of the revision and how far it effects prior laws, the repeal provisions are added.

To section 2236 should be added a note from section 3639 to the effect that the President is authorized to increase the sums for which bonds of Registers and Receivers are given, when he deems it expedient.

THE SECOND PART—LAND LAWS—

embraces all laws affecting the public lands passed by Congress from March 4, 1869, to March 3, 1875, inclusive. Those of a general character or embracing large tracts of country, are given in full, while those of a private or local character, are presented by an abstract. As the boundaries of land

districts are frequently changed by the Executive or Congress, the several laws establishing land districts are given in the abstract or second subdivision.

THE THIRD PART—DECISIONS, OPINIONS AND INSTRUCTIONS—

embraces the decisions of the Secretary of the Interior in leading cases and of the Commissioner of the General Land-Office affirmed on appeal or established by acquiescence; the opinions of Hon. Walter H. Smith, Assistant Attorney General, and a few opinions by the Attorney General: and the instructions of the Commissioner of the General Land-Office to carry into effect acts of Congress or decisions of the Department. It is believed that every circular issued since January 1, 1870, has been included, or, in case of reprints, referred to. The decisions published are only those which set forth guiding principles as the necessarily limited space compelled the exclusion of many rulings slightly varying in application to particular cases.

JUDICIAL DECISIONS.

The digest of judicial decisions contained herein is from Brightly's Federal Digest, published by Kay & Brother of Philadelphia, a work that should be in every lawyer's library. It is brought down to 1873.

In the preparation of this work I am indebted to several gentlemen whose assistance I desire to acknowledge.

ACKNOWLEDGMENTS.

To Commissioner S. S. Burdett, for valuable advice during the progress of the work and for unusual facilities in its preparation.

To Assistant Attorney General W. H. Smith, for many favors, especially for transcripts from his private papers and memoranda.

To Z. B. Sturgus, of the Secretary's office, J. K. Redington and M. M. Kaighn, of General Smith's office, and W. W. Curtis, L. K. Lippincott, M. Mobley, E. A. Fiske, S. J. Dallas, U. J. Baxter, C. W. Holcomb, D. McCarty, E. Killpatrick, B. T. Reilly, Willis Drummond, jr., D. K. Sickles and J. A. Patterson, of the General Land-Office, for advice and assistance.

To W. K. Mendenhall, John S. Hauke and L. A. Luce, Land Attorneys, Washington, D. C., and P. B. Johnson, Register at Walla Walla, W. T., for valuable suggestions embodied herein.

This opportunity is taken to state that I have, in course of preparation, a new work on Mining Law, which will embrace the local as well as the United States mining laws, with a digest of judicial decisions relating thereto.

HENRY N. COPP.

Washington, August, 1875.

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PART FIRST.

UNITED STATES REVISED STATUTES.

I. THE GENERAL LAND OFFICE.

TITLE XI.—CHAPTER THREE.

Sec.	Sec.
446. Commissioner of the General Land-Office.	454. Custody of seal, books, records &c.
447. Recorder of General Land-Office.	455. Plats of land surveyed.
448. Principal clerks on private and public land claims.	456. Returns and accounts relative to lands.
449. Principal clerk of the surveys.	457. Warrants for military lands.
450. Secretary to the President to sign land-patents.	458. Issue of patents for lands.
451. Assistant secretary to sign land-patents.	459. Duties of Recorder.
452. Restriction upon officers, clerks, and employes.	460. Copies of papers filed in the Department.
453. Duties of Commissioner.	461. Fees for exemplification of patents, &c.

SEC. 446. There shall be in the Department of the Interior a Commissioner of the General Land-Office, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of four thousand dollars a year.

25 April, 1812, c. 68, s. 11, v. 2, p. 717. 4 July, 1836, c. 352, s. 1, v. 5, p. 107. 3 March, 1873, c. 226, s. 3, v. 17, p. 508.

SEC. 447. There shall be in the General Land-Office an officer called the Recorder of the General Land-Office, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be entitled to a salary of two thousand dollars a year.

4 July, 1836, c. 352, s. 4, v. 5, p. 111. 3 March, 1837, c. 33, s. 1, v. 5, pp. 163, 164.

SEC. 448. There shall be in the General Land-Office a Principal Clerk of the public lands, and a Principal Clerk on Private Land-Claims, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall each be entitled to a salary of one thousand eight hundred dollars a year; and they shall perform such duties as may be assigned to them by the Commissioner of the Gen-

eral Land-Office. And the chief clerk of the General Land-Office, shall perform the duties of the Commissioner of the General Land-Office in case of a vacancy in said office, or of the absence or sickness of the Commissioner.

4 July, 1836, c. 352, s. 2, v. 5, p. 109.

SEC. 449. There shall be in the General Land-Office a Principal Clerk of the Surveys, who shall be appointed by the President, by and with the advice and consent of the Senate; and shall be entitled to a salary of one thousand eight hundred dollars a year. He shall direct and superintend the making of surveys, the returns thereof, and all matters relating thereto, which are done through the officers of the Surveyor-General, and perform such other duties as may be assigned to him by the Commissioner of the General Land-Office.

4 July, 1836, c. 352, s. 3, v. 5, p. 110.

SEC. 450. The President is authorized to appoint, from time to time, by and with the advice and consent of the Senate, a secretary, at a salary of one thousand five hundred dollars a year, whose duty it shall be, under the direction of the President, to sign in his name, and for him all patents for land sold or granted under the authority of the United States.

4 July, 1836, c. 352, s. 6, v. 5, p. 111.

SEC. 451. If at any time the number of patents for lands sold or granted under the authority of the United States is such that they cannot be signed within a reasonable time by the secretary appointed under the preceding section, the President may appoint an assistant secretary to sign the same, but such assistant shall be employed by the express direction of the President, and only for such time as may be necessary to bring up the arrears of patents which may be ready for signature.

26 Jan., 1848, c. 4, v. 9, p. 209.

SEC. 452. The officers, clerks and employes in the General Land-Office are prohibited from directly or indirectly purchasing or becoming interested in the purchase of any of the public land; and any person who violates this section shall forthwith be removed from office.

25 April, 1812, c. 68, s. 10, v. 2, p. 717. 4 July, 1835, c. 352, s. 14, v. 5, p. 112.

SEC. 453. The Commissioner of the General Land-Office shall perform, under the direction of the Secretary of the Interior, all executive duties appertaining to the surveying and sale of the public lands of the United States, or in any wise respecting such public lands, and, also, such as relate to private claims of land, and the issuing of patents for all agents (a) of land under the authority of the Government.

25 April, 1812, c. 68, s. 1, v. 2, p. 716. 4 July, 1836, c. 352, s. 1, v. 5, p. 107. *Barnard's Heirs vs. Ashley's Heirs et al.*, 18 How., 43. *Bell vs. Hearne et al.*, 19 How., 252. *Maguire vs. Tyler*, 1 Black, 195.

SEC. 454. The Commissioner of the General Land-Office shall retain the charge of the seal heretofore adopted for the office, which may

(a) SEC. 453. "*Agents*" should be "*grants*."

continue to be used, and of the records, books, papers, and other property appertaining to the office.

25 April, 1812, c. 68, ss. 4, 5, v. 2, p. 717.

SEC. 455. The Commissioner of the General Land-Office shall, when required by the President or either House of Congress, make a plat of any land surveyed under the authority of the United States, and give such information respecting the public lands and concerning the business of his office as shall be directed.

25 April, 1812, c. 68, s. 6, v. 2, p. 717.

SEC. 456. All returns relative to the public lands shall be made to the Commissioner of the General Land-Office; and he shall have power to audit and settle all public accounts relative to the public lands; and upon the settlement of any such account he shall certify the balance, and transmit the account, with the vouchers and certificate, to the First Comptroller of the Treasury for his examination and decision thereon.

25 April, 1812, c. 68, s. 9, v. 2, p. 717.

SEC. 457. In all cases in which land has heretofore or shall hereafter be given by the United States for military services, warrants shall be granted to the parties entitled to such land by the Secretary of the Interior; and such warrants shall be recorded in the General Land Office, in books to be kept for the purpose, and shall be located as is or may be provided by law; and patents shall afterwards be issued accordingly.

25 April, 1812, c. 68, s. 7, v. 2, p. 717.

SEC. 458. All patents issuing from the General Land-Office shall be issued in the name of the United States, and be signed by the President, and countersigned by the Recorder of the General Land-Office, and shall be recorded in the office, in books to be kept for the purpose.

25 April, 1812, c. 68, s. 8, v. 2, p. 717. 3 March, 1841, c. 26, s. 2, v. 5, p. 417.

SEC. 459. It shall be the duty of the Recorder of the General Land-Office, in pursuance of instructions from the Commissioner, to certify and affix the seal of the Office to all patents for public lands, and to attend to the correct engrossing, recording and transmission of such patents. He shall prepare alphabetical indexes of the names of patentees, and of persons entitled to patents; and he shall prepare such copies and exemplifications of matters on file or recorded in the General Land-Office as the Commissioner may from time to time direct. Whenever the office of recorder shall become vacant, or in case of his sickness or absence, the duties of his office shall be performed ad interim by the principal clerk on private land-claims.

25 April, 1812, c. 68, s. 8, v. 2, p. 717. 4 July, 1836, c. 352, s. 4, v. 5, p. 111.

SEC. 460. Whenever any person claiming to be interested in or entitled to land, under any grant or patent from the United States, applies to the Department of the Interior for copies of papers filed and remaining therein, in any wise affecting the title to such land, it shall be the duty of the Secretary of the Interior to cause such copies to be made

out and authenticated, under his hand and the seal of the General Land-Office, for the person so applying.

23 January, 1823, c. 6, v. 3, p. 721. 4 July, 1836, c. 352, s. 7, v. 5, p. 111.

Sec. 461. All exemplifications of patents, or papers on file, or of record in the General Land-Office, which may be required by parties interested, shall be furnished by the Commissioner upon the payment by such parties at the rate of fifteen cents per hundred words, and two dollars for copies of township plats or diagrams, with an additional sum of one dollar for the Commissioner's certificate of verification with the General Land-Office seal; and one of the employes of the office shall be designated by the Commissioner as the receiving clerk, and the amounts so received shall, under the direction of the Commissioner, be paid into the Treasury; but fees shall not be demanded for such authenticated copies as may be required by the officers of any branch of the Government, nor for such unverified copies as the Commissioner in his discretion may deem proper to furnish.

2 July, 1864, c. 224, v. 13, p. 375.

II. THE PUBLIC LANDS.

TITLE XXXII.—CHAPTER ONE.

SURVEYORS AND DEPUTY SURVEYORS.

Sec.	Sec.
2207. Surveyors-general, how and where appointed.	2217. Duration of office.
2208. Salary of in Louisiana, Florida, Minnesota, Nebraska, Iowa, and Dakota.	2218. Completion of surveys, delivery of field-notes, &c.
2209. Salary of in Oregon and Washington.	2219. Devolution of surveyor-general's powers upon Commissioner of Land Office, when.
2210. Salary of in Colorado, New Mexico, California, Idaho, Nevada, Montana, Utah, Wyoming, and Arizona.	2220. Free access to field-notes, &c., delivered to States.
2211. Salaries of in Florida, Oregon, and California, how and from what time payable.	2221. Conditions of delivery of field-notes to the States.
2212. Offices, number and location of.	2222. Continuance of duties after expiration of commission.
2213. Offices, location of in Minnesota, Idaho, Nebraska, and Iowa.	2223. General duties of surveyors-general.
2214. Residence of surveyor-general.	2224. Seals of surveyors-general of California, Oregon, and Louisiana, transcripts from records of.
2215. Bond of surveyor-general.	2225. Transcripts from records of Louisiana.
2216. New bond of and additional security.	2226. Clerk-hire, allowance of to surveyors-general.

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| <p>2227. Office-rent, allowance of to surveyors-general.</p> <p>2228. Duties of register and receiver performed by surveyor-general.</p> <p>2229. Official papers, &c., in office of surveyor-general of California; copies thereof.</p> | <p>2230. Bond of deputy-surveyor.</p> <p>2231. Oath of deputy-surveyor.</p> <p>2232. Suit on bond of deputy-surveyor, lien of.</p> <p>2233. Penalty for default of deputy.</p> |
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SEC. 2207. There shall be appointed by the President, by and with the advice and consent of the Senate, a surveyor-general for the States and Territories herein named, embracing, respectively, one surveying district, namely: Louisiana, Florida, Minnesota, Kansas, California, Nevada, Oregon, Nebraska and Iowa, Dakota, Colorado, New Mexico, Idaho, Washington, Montana, Utah, Wyoming, Arizona.

3 March, 1823, c. 29, s. 7, v. 3, p. 755. 3 March, 1831, c. 116, s. 1, v. 4, p. 492. 27 Sept., 1850, c. 76, s. 1, v. 9, p. 496. 3 March, 1853, c. 145, s. 1, v. 10, p. 244. 17 July, 1854, c. 84, s. 7, v. 10, p. 306. 22 July, 1854, c. 103, ss. 1, 10, v. 10, pp. 308, 309. 3 March, 1857, c. 107, s. 1, v. 11, p. 212. 28 Feb., 1861, c. 59, s. 17, v. 12, p. 176. 2 March, 1861, c. 83, s. 17, v. 12, p. 214. 2 March, 1861, c. 86, s. 17, v. 12, p. 244. 2 March, 1867, c. 179, s. 1, v. 14, p. 542. 29 June, 1866, c. 156, v. 14, p. 77. 4 July, 1866, c. 166, s. 4, v. 14, p. 85. 28 July, 1866, c. 311, s. 1, v. 14, p. 344. 16 July, 1868, c. 175, s. 1, v. 15, p. 91. 21 Feb., 1855, c. 117, s. 1, v. 10, p. 611. 5 Feb., 1870, c. 14, s. 2, v. 16, p. 65. 11 July, 1870, c. 246, v. 16, p. 230. 8 May, 1872, c. 140, s. 1, v. 17, p. 76.

SEC. 2208. The surveyors-general of Louisiana, Florida, Minnesota, Kansas, Nebraska and Iowa, and of Dakota Territory, shall each receive a salary at the rate of two thousand dollars a year.

3 March, 1823, c. 29, s. 7, v. 3, p. 755. 3 March, 1831, c. 116, s. 5, v. 4, p. 493. 2 March, 1861, c. 86, s. 17, v. 12, p. 244. 8 May, 1872, c. 140, s. 1, v. 17, p. 76.

SEC. 2209. The surveyors-general of Oregon and of Washington shall each receive a salary at the rate of two thousand five hundred dollars a year.

27 Sept., 1850, c. 76, s. 2, v. 9, p. 496. 3 March, 1853, c. 145, s. 11, v. 10, p. 248. 14 February, 1853, c. 69, s. 4, v. 10, p. 158. 17 July, 1854, c. 84, s. 7, v. 10, p. 306. 3 March, 1855, c. 175, s. 26, v. 10, p. 674. 30 May, 1862, c. 86, s. 9, v. 12, p. 410. 8 May, 1872, c. 140, s. 1, v. 17, p. 76.

SEC. 2210. The surveyors-general of Colorado, New Mexico, California, Idaho, Nevada, Montana, Utah, Wyoming, and Arizona, shall each receive a salary at the rate of three thousand dollars a year.

3 March, 1853, c. 145, s. 1, v. 10, p. 244. 22 July, 1854, c. 103, s. 1, v. 10, p. 308. 28 Feb., 1861, c. 59, s. 17, v. 12, p. 176. 2 March, 1861, c. 83, s. 17, v. 12, p. 214. 30 May, 1862, c. 86, s. 9, v. 12, p. 410. 2 March, 1867, c. 179, s. 1, v. 14, p. 542. 29 June, 1866, c. 156, v. 14, p. 77. 4 July, 1866, c. 166, s. 4, v. 14, p. 85. 16 July, 1868, c. 175, s. 1, v. 15, p. 91. 21 Feb., 1855, c. 117, s. 1, v. 10, p. 611. 5 Feb., 1870, c. 14, s. 2, v. 16, p. 65. 11 July, 1870, c. 246, v. 16, p. 230. 8 May, 1872, c. 140, s. 1, v. 17, p. 76.

SEC. 2211. The salary of each surveyor-general of Florida, Oregon, and California shall be paid quarter-yearly, and shall commence from the time he enters into bond, as provided by law.

3 March, 1823, c. 29, s. 7, v. 3, p. 756. 27 Sept., 1850, c. 76, s. 2, v. 9, p. 496. 3 March, 1853, c. 145, s. 1, v. 10, p. 244.

SEC. 2212. There shall be but one office of surveyor-general in each surveyor-general's district; and such office shall be located as the President, in view of the public convenience, may from time to time direct, except as provided in the following section.

2 July, 1864, c. 210, s. 8, v. 13, p. 352.

SEC. 2213. The surveyor-general's office for Minnesota district shall continue to be located at the city of St. Paul; that for Idaho Territory, at Boise City; and that for the district of Nebraska and Iowa, at Plattsmouth, in Nebraska.

3 March, 1857, c. 107, s. 1, v. 11, p. 212. 29 June, 1866, c. 156, v. 14, p. 77. 28 July, 1866, c. 311, s. 1, v. 14, p. 344.

SEC. 2214. Every surveyor-general, while in the discharge of the duties of his office, shall reside in the district for which he is appointed.

3 March, 1843, c. 100, s. 1, v. 5, p. 637.

SEC. 2215. Every surveyor-general shall, before entering on the duties of his office, execute and deliver to the Secretary of the Interior a bond, with good and sufficient security, for the penal sum of thirty thousand dollars, conditioned for the faithful disbursement, according to law, of all public money placed in his hands, and for the faithful performance of the duties of his office.

7 May, 1822, c. 118, s. 1, v. 3, p. 697. *Farrar vs. U. S.*, 5 Pet., 373.

SEC. 2216. The President is authorized, whenever he may deem it expedient, to require any surveyor-general to give a new bond and additional security, under the direction of the Secretary of the Interior, for the faithful disbursement, according to law, of all money placed in his hands.

7 May, 1822, c. 118, s. 3, v. 3, p. 697.

SEC. 2217. The commission of every surveyor-general now in office, and of every surveyor-general hereafter appointed, shall cease and expire, unless sooner vacated by death, resignation, or removal from office, in four years from the date of the commission.

7 May, 1822, c. 118, s. 2, v. 3, p. 697.

SEC. 2218. The Secretary of the Interior shall take all the necessary measures for the completion of the surveys in the several surveying-districts for which surveyors-general have been, or may be, appointed, at the earliest periods compatible with the purposes contemplated by law; and whenever the surveys and records of any such district are completed, the surveyor-general thereof shall be required to deliver over to the secretary of state of the respective States, including such surveys, or to such other officer as may be authorized to receive them, all the field-notes, maps, records, and other papers appertaining to land-titles within the same; and the office of surveyor-general in every such district shall thereafter cease and be discontinued.

12 June, 1840, c. 36, s. 1, v. 5, p. 384.

SEC. 2219. In all cases where, as provided in the preceding section, the field-notes, maps, records, and other papers appertaining to land-titles in any State are turned over to the authorities of such State, the same authority, powers, and duties in relation to the survey, resurvey, or subdivision of the lands therein, and all matters and things connected

therewith, as previously exercised by the surveyor-general, whose district included such State, shall be vested in, and devolved upon, the Commissioner of the General Land-Office.

22 Jan., 1853, c. 24, s. 1, v. 10, p. 152.

SEC. 2220. Under the authority and direction of the Commissioner of the General Land-Office, any deputy surveyor or other agent of the United States shall have free access to any such field-notes, maps, records, and other papers, for the purpose of taking extracts therefrom, or making copies thereof, without charge of any kind.

22 Jan., 1853, c. 24, s. 2, v. 10, p. 152.

SEC. 2221. The field-notes, maps, records, and other papers mentioned in section twenty-two hundred and nineteen, shall in no case be turned over to the authorities of any State, until such State has provided by law for the reception and safe-keeping of the same as public records, and for the allowance of free access to the same by the authorities of the United States.

22 Jan., 1853, c. 24, s. 3, v. 10, p. 152.

SEC. 2222. Every surveyor-general, register, and receiver, except where the President sees cause otherwise to determine, is authorized to continue in the uninterrupted discharge of his regular official duties, after the day of expiration of his commission, and until a new commission is issued to him for the same office, or until the day when a successor enters upon the duties of such office; and the existing official bond of any officer so acting shall be deemed good and sufficient, and in force, until the date of the approval of a new bond to be given by him, if re-commissioned, or otherwise, for the additional time he may so continue officially to act, pursuant to the authority of this section.

3 March, 1853, c. 145, s. 10, v. 10, p. 247.

SEC. 2223. Every surveyor-general shall engage a sufficient number of skillful surveyors as his deputies, to whom he is authorized to administer the necessary oaths upon their appointments. He shall have authority to frame regulations for their direction, not inconsistent with law or the instructions of the General Land-Office, and to remove them for negligence or misconduct in office.

Second. He shall cause to be surveyed, measured and marked, without delay, all base and meridian lines through such points and perpetuated by such monuments, and such other correction parallels and meridians as may be prescribed by law or by instructions from the General Land-Office, in respect to the public lands within his surveying district, to which the Indian title has been or may be hereafter extinguished.

Third. He shall cause to be surveyed all private land claims within his district after they have been confirmed by authority of Congress, so far as may be necessary to complete the survey of the public lands.

Fourth. He shall transmit to the register of the respective land-offices within his district, general and particular plats of all lands surveyed by him for each land-district; and he shall forward copies of such plats to the Commissioner of the General Land Office.

Fifth. He shall, so far as is compatible with the desk-duties of his office, occasionally inspect the surveying operations while in progress in the field, sufficiently to satisfy himself of the fidelity of the execution of the work according to contract, and the actual and necessary expenses

incurred by him while so engaged shall be allowed; and where it is incompatible with his other duties for a surveyor-general to devote the time necessary to make a personal inspection of the work in progress, then he is authorized to depute a confidential agent to make such examination; and the actual and necessary expenses of such person shall be allowed and paid for that service, and five dollars a day during the examination in the field; but such examination shall not be protracted beyond thirty days, and in no case longer than is actually necessary; and when a surveyor-general, or any person employed in his office at a regular salary, is engaged in such special service, he shall receive only his necessary expenses in addition to his regular salary.

18 May, 1796, c. 29, s. 1, v. 1, p. 464. 29 April, 1816, c. 151, s. 1, v. 3, p. 325. 3 March, 1831, c. 116, s. 1, v. 4, p. 492. 3 March, 1853, c. 145, ss. 3, 10, v. 10, pp. 245, 247.

Sec. 2224. The official seals heretofore authorized to be provided for the offices of the surveyors-general of Oregon, California, and Louisiana shall continue to be used; and any copy of or extract from the plats, field-notes, records, or other papers on file in those offices, respectively, when authenticated by the seal and signature of the proper surveyor-general, shall be evidence in all cases in which the original would be evidence.

3 March, 1853, c. 145, ss. 2, 11, v. 10, pp. 245, 248.

Sec. 2225. Any copy of a plat of survey, or transcript from the records of the office of surveyor-general of Louisiana, duly certified by him, shall be admitted as evidence in all the courts of the United States and the Territories thereof.

3 March, 1831, c. 116, s. 5, v. 4, p. 493.

Sec. 2226. There shall be allowed for the offices of the several surveyors-general, for clerk-hire therein, such sums as may be appropriated for the purpose by Congress from year to year.

Sec. 2227. There shall be allowed for office-rent, fuel, books, stationery, and other incidental expenses of the several offices of surveyors-general, such sums as may be appropriated for the purpose by Congress, from year to year.

Sec. 2228. The President is authorized, in any case where he thinks the public interest may require it, to transfer the duties of register and receiver in any district to the surveyor-general of the surveying-district in which such land-district is located.

30 May, 1862, c. 86, s. 8, v. 12, p. 410.

Sec. 2229. All official books, papers, instruments of writing, documents, archives, official seals, stamps, or dies, which have been heretofore authorized by law to be collected and deposited in the surveyor-general's office in California, shall be safely and securely kept by such surveyor-general in the archives of his office; and copies thereof, authenticated by the surveyor-general under his seal of office, shall be evidence in all cases where the originals would be evidence.

18 May, 1858, c. 39, s. 1, v. 11, p. 289.

Sec. 2230. Every deputy-surveyor shall enter into bond, with sufficient security, for the faithful performance of all surveying contracts confided to him; and the penalty of the bond, in each case, shall be double the estimated amount of money accruing under such contracts,

at the rate per mile stipulated to be paid therein. The sufficiency of the sureties to all such bonds shall be approved and certified by the proper surveyor-general.

3 March, 1831, c. 116, s. 4, v. 4, p. 493. 3 March, 1853, c. 145, s. 10, v. 10, p. 247.

Sec. 2231. The surveyors-general, in addition to the oath now authorized by law to be administered to deputies on their appointment to office, shall require each of their deputies, on the return of his surveys, to take and subscribe an oath that those surveys have been faithfully and correctly executed, according to law and the instructions of the surveyor-general.

8 Aug., 1846, c. 106, s. 2, v. 9, p. 79.

Sec. 2232. The district attorney of the United States, in whose district any false, erroneous, or fraudulent surveys have been executed, shall, upon the application of the proper surveyor-general, immediately institute suit upon the bond of such deputy; and the institution of such suit shall act as a lien upon any property owned or held by such deputy, or his sureties, at the time such suit was instituted.

8 Aug., 1846, c. 106, s. 2, v. 9, p. 79.

Sec. 2233. In the event of the failure of a deputy in Louisiana to comply with the terms of his contract, unless such failure be satisfactorily shown by him to have arisen from causes beyond his control, he shall forfeit the penalty of his bond on due process of law, and ever afterward be debarred from receiving a contract for surveying public lands.

3 March, 1831, c. 116, s. 4, v. 4, p. 493.

CHAPTER TWO.

REGISTERS AND RECEIVERS.

Sec.	Sec.
2234. Registers and receivers, appointment of.	2241. Excess of compensation to be paid in Treasury.
2235. Residence of register and receiver.	2242. Illegal fees; penalty.
2236. Bond of register and receiver.	2243. Compensation of registers and receivers, when to commence.
2237. Salaries of register and receiver.	2244. Duration of office of registers and receivers.
2238. Fees and commissions of register and receiver.	2245. Monthly and quarterly returns of receivers.
2239. Fees of register and receiver for consolidated land-offices.	2246. Oaths administered by registers and receivers.
2240. Maximum of compensation for registers and receivers.	2247. Penalty for false information by register.

Sec. 2234. There shall be appointed by the President, by and with

the advice and consent of the Senate, a register of the land-office and a receiver of public moneys, for each land-district established by law.

See all acts establishing land-districts.

SEC. 2235. Every register and receiver shall reside at the place where the land-office for which he is appointed is directed by law to be kept.

See all acts establishing land-districts.

SEC. 2236. Every register and receiver shall, before entering on the duties of his office, give bond in the penal sum of ten thousand dollars, with approved security, for the faithful discharge of his trust.

10 May, 1800, c. 55, ss. 1, 6, v. 2, pp. 73, 75. 3 March, 1853, c. 145, s. 5, v. 10, p. 245.

SEC. 2237. Every register and receiver shall be allowed an annual salary of five hundred dollars.

30 May, 1862, c. 86, s. 6, v. 12, p. 409. 20 April, 1818, c. 123, v. 3, p. 466.

SEC. 2238. Registers and receivers, in addition to their salaries, shall be allowed each the following fees and commissions, namely:

4 Sept., 1841, c. 16, s. 12, v. 5, p. 456. 21 March, 1864, c. 38, s. 4, v. 13, p. 35.

First. A fee of one dollar for each declaratory statement filed and for services in acting on pre-emption claims.

Second. A commission of one per centum on all moneys received at each receiver's office.

20 April, 1818, c. 123, v. 3, p. 466.

Third. A commission to be paid by the homestead applicant, at the time of entry, of one per centum on the cash price, as fixed by law, of the land applied for; and a like commission when the claim is finally established, and the certificate therefor issued as the basis of a patent.

21 March, 1864, c. 38, s. 2, v. 13, p. 35. 20 May, 1862, c. 75, s. 6, v. 12, p. 393. 15 July, 1870, c. 294, s. 25, v. 16, p. 320.

Fourth. The same commission on lands entered under any law to encourage the growth of timber on western prairies, as allowed when the like quantity of land is entered with money.

3 March, 1873, c. 277, s. 6, v. 17, p. 606.

Fifth. For locating military bounty-land warrants, issued since the eleventh day of February, eighteen hundred and forty-seven, and for locating agricultural-college land-scrip, the same commission, to be paid by the holder or assignee of each warrant or scrip, as is allowed for sales of the public lands for cash, at the rate of one dollar and twenty-five cents per acre.

22 March, 1852, c. 19, s. 2, v. 10, p. 4. 2 July, 1862, c. 130, s. 7, v. 12, p. 505.

Sixth. A fee, in donation cases, of five dollars for each final certificate for one hundred and sixty acres of land, ten dollars for three hundred and twenty acres, and fifteen dollars for six hundred and forty acres.

30 May, 1862, c. 86, s. 6, v. 12, p. 409.

Seventh. In the location of lands by States and corporations under grants from Congress for railroads and other purposes, (except for agricultural colleges,) a fee of one dollar for each final location of one hundred and sixty acres; to be paid by the State or corporation making such location.

1 July, 1864, c. 196, s. 1, v. 13, p. 335.

Eighth. A fee of five dollars per diem for superintending public land sales at their respective offices; and, to each receiver, mileage in going to and returning from depositing the public moneys received by him.

24 April, 1820, c. 51, s. 5, v. 3, p. 567.

Ninth. A fee of five dollars for filing and acting upon each application for patent or adverse claim filed for mineral lands, to be paid by the respective parties.

10 May, 1872, c. 152, s. 12, v. 17, p. 95.

Tenth. Registers and receivers are allowed, jointly, at the rate of fifteen cents per hundred words for testimony reduced by them to writing for claimants, in establishing pre-emption and homestead rights.

21 March, 1864, c. 38, s. 4, v. 13, p. 35.

Eleventh. A like fee as provided in the preceding subdivision when such writing is done in the land-office, in establishing claims for mineral lands.

10 May, 1872, c. 152, s. 12, v. 17, p. 95.

Twelfth. Registers and receivers in California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana, are each entitled to collect and receive fifty per centum on the fees and commissions provided for in the first, third, and tenth subdivisions of this section.

21 March, 1864, c. 38, s. 6, v. 13, p. 36, and several acts establishing land-offices for Utah, Wyoming, and Montana.

SEC. 2239. The register for any consolidated land-district, in addition to the fees now allowed by law, shall be entitled to charge and receive for making transcripts for individuals, or furnishing any other record information respecting public lands or land-titles in his consolidated land-district, such fees as are properly authorized by the tariff existing in the local courts of his district; and the receiver shall receive his equal share of such fees, and it shall be his duty to aid the register in the preparation of the transcripts, or giving the desired record information.

18 Feb., 1861, c. 38, ss. 1, 3, v. 12, p. 131.

SEC. 2240. The compensation of registers and receivers, including salary, fees, and commissions, shall in no case exceed in the aggregate three thousand dollars a year, each; and no register or receiver shall receive for any one quarter or fractional quarter more than a pro-rata allowance of such maximum.

21 March, 1864, c. 38, s. 6, v. 13, p. 36. 20 April, 1818, c. 123, v. 3, p. 466. 20 May, 1862, c. 75, s. 6, v. 12, p. 393. 30 May, 1862, c. 86, s. 6, v. 12, p. 409. 1 July, 1864, c. 196, s. 1, v. 13, p. 335. 22 March, 1852, c. 19, s. 3, v. 10, p. 4. 2 July, 1862, c. 130, s. 7, v. 12, p. 505. 2 Feb., 1859, c. 19, v. 11, p. 378. 18 Feb. 1861, c. 38, ss. 1, 3, v. 12, p. 131.—U. S. *vs.* Babbit, 1. Bl., 55.

SEC. 2241. Whenever the amount of compensation received at any land-office exceeds the maximum allowed by law to any register or receiver, the excess shall be paid into the Treasury, as other public moneys.

3 March, 1853, c. 97, s. 1, v. 10, p. 204. 18 Feb., 1861, c. 38, ss. 1, 3, v. 12, p. 131.

SEC. 2242. No register or receiver shall receive any compensation out of the Treasury for past services who has charged or received illegal fees; and, on satisfactory proof that either of such officers has charged or received fees or other rewards not authorized by law, he shall be forthwith removed from office.

22 March, 1852, c. 19, s. 3, v. 10, p. 4. 17 July, 1854, c. 84, s. 6, v. 10, p. 306.

SEC. 2243. The compensation of registers and receivers, both for salary and commissions, shall commence and be calculated from the time they, respectively, enter on the discharge of their duties.

24 Feb., 1855, c. 124, s. 3, v. 10, p. 615.

SEC. 2244. All registers and receivers shall be appointed for the term of four years, but shall be removable at pleasure.

15 May, 1820, c. 102, s. 1, v. 3, p. 582.

SEC. 2245. The receivers shall make to the Secretary of the Treasury monthly returns of the moneys received in their several offices, and pay over such money pursuant to his instructions. And they shall also make to the Commissioner of the General Land-Office like monthly returns, and transmit to him quarterly accounts-current of the debits and credits of their several offices with the United States.

4 July, 1836, c. 352, s. 9, v. 5, p. 111.

SEC. 2246. The register or receiver is authorized, and it shall be their duty, to administer any oath required by law or the instructions of the General Land-Office, in connection with the entry or purchase of any tract of the public lands; but he shall not charge or receive, directly or indirectly, any compensation for administering such oath.

12 June, 1840, c. 35, v. 5, p. 384.

SEC. 2247. If any person applies to any register to enter any land whatever, and the register knowingly and falsely informs the person so applying that the same has already been entered, and refuses to permit the person so applying to enter the same, such register shall be liable therefor to the person so applying, for five dollars for each acre of land which the person so applying offered to enter, to be recovered by action of debt in any court of record having jurisdiction of the amount.

4 July, 1836, c. 352, s. 13, v. 5, p. 112.

CHAPTER THREE.

LAND-DISTRICTS.

GENERAL PROVISIONS RESPECTING CERTAIN LANDS.

Sec. 2248. When land-office may be discontinued by Secretary of the Interior.	Sec. 2253. Change of boundaries of land-districts by the President.
2249. When land-office may be continued by Secretary of the Interior.	2254. Business of original district in case of change of boundaries.
2250. When land-office may be annexed to adjacent district by the President.	2255. Allowance of office-rent and clerk-hire for consolidated land-offices.
2251. Change of location of land office by the President.	2256. Boundaries of land-districts in the United States on the 1st November, 1872.
2252. Discontinuance of land-offices by the President.	

SEC. 2248. Whenever the quantity of public land remaining unsold in any land-district is reduced to a number of acres less than one hundred thousand, it shall be the duty of the Secretary of the Interior to discontinue the land-office of such district; and if any land in any such district remains unsold at the time of the discontinuance of a land-office, the same shall be subject to sale at some one of the existing land-offices most convenient to the district in which the land-office has been discontinued, of which the Secretary of the Interior shall give notice.

12 June, 1840, c. 36, s. 2, v. 5, p. 385.

SEC. 2249. The Secretary of the Interior may continue any land-district in which is situated the seat of government of any one of the States, and may continue the land-office in such district, notwithstanding the quantity of land unsold in such district may not amount to one hundred thousand acres, when, in his opinion, such continuance is required by public convenience, or in order to close the land-system in such State.

4 Sept., 1841, c. 16, s. 7, v. 5, p. 455.

SEC. 2250. Whenever the cost of collecting the revenue from the sales of the public lands in any land-district is as much as one-third of the whole amount of revenue collected in such district, it may be lawful for the President, if, in his opinion, not incompatible with the public interest, to discontinue the land-office in such district, and to annex the same to some other adjoining land-district.

3 March, 1853, c. 97, s. 1, v. 10, pp. 189, 194.

SEC. 2251. The President is authorized to change the location of the land-offices in the several land-districts established by law, and to relo-

cate the same from time to time at such point in the district as he deems expedient.

3 March, 1853, c. 97, s. 1, v. 10, p. 204. 3 March, 1853, c. 144, v. 10, p. 244.

SEC. 2252. Upon the recommendation of the Commissioner of the General Land-Office, approved by the Secretary of the Interior, the President may order the discontinuance of any land-office and the transfer of any of its business and archives to any other land-office within the same State or Territory.

30 May, 1862, c. 86, s. 5, v. 12, p. 409.

SEC. 2253. The President is authorized to change and re-establish the boundaries of land districts whenever, in his opinion, the public interests will be subserved thereby, without authority to increase the number of land-offices or land-districts.

29 June, 1870, c. 171, v. 16, p. 171.

SEC. 2254. In case of the division of existing land-districts by the erection of new ones, or by a change of boundaries by the President, all business in such original districts shall be entertained and transacted without prejudice or change, until the offices in the new districts are duly opened by public announcement under the direction of the Secretary of the Interior. All sales or disposals of the public lands heretofore regularly made at any land-office, after such lands have been made part of another district by any act of Congress, or by any act of the President, are confirmed, provided the same are free from conflict with prior valid rights.

31 May, 1872, c. 241, v. 17, p. 192.

SEC. 2255. The Secretary of the Interior is authorized to make a reasonable allowance for office-rent for each consolidated land-office; and when satisfied of the necessity therefor, to approve the employment by the register of one or more clerks, at a reasonable per-diem compensation, for such time as such clerical force is absolutely required to keep up the current public business, which clerical force shall be paid out of the surplus fees authorized to be charged by section twenty-two hundred and thirty-nine, if any, and if no surplus exists, then out of the appropriation for incidental expenses of district land-offices: but no clerk shall be so paid unless his employment has been first sanctioned by the Secretary of the Interior.

18 Feb., 1861, c. 38, s. 2, v. 12, p. 131.

PROVISIONS RESPECTING PARTICULAR LOCAL LAND-DISTRICTS.

SEC. 2256. The following boundaries of the ninety-three land districts, with the location of the respective land-offices, are established until changed in pursuance of law, namely:

[As the land-districts are continually changing, the boundaries are omitted.—ED.]

CHAPTER FOUR.

PRE-EMPTIONS.

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2258. Lands not subject to pre-emption.
2259. Persons entitled to pre-emption.
2260. Persons not entitled to pre-emption.
2261. Limitation of pre-emption right.
2262. Oath of pre-emptionist where filed, penalty.
2263. Proof of settlement, assignment of pre-emption rights.
2264. Statement to be filed by settler with intent to purchase on lands subject to private entry.
2265. Claim filed by settler on land not proclaimed for sale.
2266. Declaratory statement of settlers on unsurveyed lands, when filed.
2267. Pre-emption claimants, time of making proof of payment.
2268. Extension of time in certain cases to persons in military and naval service.
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2273. When more than one settler, rights of, appeals to Commissioner.

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2274. Settlements of two or more persons on the same subdivision before survey.
2275. Settlements before survey on sections 16 or 36, deficiencies thereof.
2276. Selections to supply deficiencies of school-lands.
2277. Military bounty-land warrants receivable for pre-emption payments.
2278. Agricultural-college scrip receivable in payment of pre-emptions.
2279. Pre-emption limit along railroad lines.
2280. Pre-emption rights on lands reserved for grants found invalid.
2281. Pre-emption rights on lands reserved for railroads.
2282. Sale of land not to be delayed, &c.
2283. Certain lands in Kansas, how to be sold.
2284. Transfer of above claims prior to, &c., subsequent right of entry.
2285. Pre-emption restrictions not to apply to certain lands in Kansas.
2286. Pre-emption by counties for seats of justice.
2287. Where claimant of entry becomes register or receiver.
2288. Right of transfer of settlers under homestead or pre-emption laws for certain public purposes.

Sec. 2257. All lands belonging to the United States, to which the Indian title has been or may hereafter be extinguished, shall be subject to the right of pre-emption, under the conditions, restrictions, and stipulations provided by law.

2 June, 1862, c. 94, s. 1, v. 12, p. 413.

SEC. 2258. The following classes of lands, unless otherwise specially provided for by law, shall not be subject to the rights of pre-emption, to wit:

First. Lands included in any reservation by any treaty, law, or proclamation of the President for any purpose.

Second. Lands included within the limits of any incorporated town, or selected as the site of a city or town.

Third. Lands actually settled and occupied for purposes of trade and business, and not for agriculture.

Fourth. Lands on which are situated any known salines or mines.

4 Sept., 1841, c. 16, s. 10, v. 5, p. 455. *Wilcox vs. Jackson*, 13 Pet., 498; *Josephs vs. U. S.*, 1 N. and H., 197; *Turner vs. American Baptist Union*, 5 McLean, 344; *U. S. vs. Railroad Bridge Co.*, 6 McLean, 517; *Russell vs. Beebe, Hamps.*, 704.

SEC. 2259. Every person, being the head of a family, or widow, or single person, over the age of twenty-one years, and a citizen of the United States, or having filed a declaration of intention to become such, as required by the naturalization laws, who has made, or hereafter makes, a settlement in person on the public lands subject to pre-emption, and who inhabits and improves the same, and who has erected or shall erect a dwelling thereon, is authorized to enter with the register of the land-office for the district in which such land lies, by legal sub-divisions, any number of acres not exceeding one hundred and sixty, or a quarter-section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land.

4 Sept., 1841, c. 16, s. 10, v. 5, p. 455. *U. S. vs. Fitzgerald*, 15 Pet., 407; *Lytle vs. Arkansas*, 9 How., 333; *Cunningham vs. Ashley*, 14 How., 377; *Barnard's Heirs vs. Ashley's Heirs*, 18 How., 44; *Garland vs. Wynn*, 20 How., 6; *Harkness vs. Underhill*, 1 Bl., 325; *Witherspoon vs. Duncan*, 4, Wall., 218.

SEC. 2260. The following classes of persons, unless otherwise specially provided for by law, shall not acquire any right of pre-emption under the provisions of the preceding section, to wit:

First. No person who is the proprietor of three hundred and twenty acres of land in any State or Territory.

4 Sept., 1841, c. 16, s. 10, v. 5, p. 455.

Second. No person who quits or abandons his residence on his own land to reside on the public lands in the same State or Territory.

SEC. 2261. No person shall be entitled to more than one pre-emptive right by virtue of the provisions of section twenty-two hundred and fifty-nine; nor where a party has filed his declaration of intention to claim the benefits of such provisions, for one tract of land, shall he file, at any future time, a second declaration for another tract.

4 Sept., 1841, c. 16, s. 10, v. 5, p. 455. 3 March, 1843, c. 86, s. 10, v. 5, p. 620.

SEC. 2262. Before any person claiming the benefit of this chapter is allowed to enter lands, he shall make oath before the receiver or register of the land-district in which the land is situated that he has never had the benefit of any right of pre-emption under section twenty-two hundred and fifty-nine; that he is not the owner of three hundred and twenty acres of land in any State or Territory; that he has not settled upon and improved such land to sell the same on speculation, but in good faith to appropriate it to his own exclusive use; and that he

has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person whatsoever, by which the title which he might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself; and if any person taking such oath swears falsely in the premises, he shall forfeit the money which he may have paid for such land, and all right and title to the same; and any grant or conveyance which he may have made, except in the hands of bona-fide purchasers, for a valuable consideration, shall be null and void, except as provided in section twenty-two hundred and eighty-eight. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land-office of such district, and to transmit a duplicate copy to the General Land-Office, either of which shall be good and sufficient evidence that such oath was administered according to law.

4 Sept., 1841, c. 16, s. 13, v. 5, p. 456.

Sec. 2263. Prior to any entries being made under and by virtue of the provisions of section twenty-two hundred and fifty-nine, proof of the settlement and improvement thereby required shall be made to the satisfaction of the register and receiver of the land-district in which such lands lie, agreeably to such rules as may be prescribed by the Secretary of the Interior; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void.

4 Sept., 1841, c. 16, s. 12, v. 5, p. 456. *Lytle vs. Arkansas*, 9 How., 333; *Cunningham vs. Ashley*, 14 How., 377; *Barnard's Heirs vs. Ashley's Heirs*, 18 How., 44; *Garland vs. Wynn*, 20 How., 6; *Lytle vs. Arkansas*, 22 How., 193; *Harkness vs. Underhill*, 1 Bl., 325; *Lindsey vs. Hawse*, 2 Bl., 554; *Myers vs. Croft*, 13 Wall., 291.

Sec. 2264. When any person settles or improves a tract of land subject at the time of settlement to private entry, and intends to purchase the same under the preceding provisions of this chapter, he shall, within thirty days after the date of such settlement, file with the register of the proper district a written statement, describing the land settled upon and declaring his intention to claim the same under the pre-emption laws; and he shall, moreover, within twelve months after the date of such settlement, make the proof, affidavit, and payment hereinbefore required. If he fails to file such written statement, or to make such affidavit, proof and payment within the several periods named above, the tract of land so settled and improved shall be subject to the entry of any other purchaser.

4 Sept., 1841, c. 16, s. 15, v. 5, p. 457.

Sec. 2265. Every claimant under the pre-emption law for land not yet proclaimed for sale is required to make known his claim in writing to the register of the proper land-office within three months from the time of the settlement, giving the designation of the tract and the time of settlement; otherwise his claim shall be forfeited and the tract awarded to the next settler, in the order of time, on the same tract of land, who has given such notice and otherwise complied with the conditions of the law.

3 March, 1843, c. 86, s. 5, v. 5, p. 620. *Johnson vs. Tawsley*, 13 Wall., 72.

Sec. 2266. In regard to settlements which are authorized upon

unsurveyed lands, the pre-emption claimant shall be in all cases required to file his declaratory statement within three months from the date of the receipt at the district land-office, of the approved plat of the township embracing such pre-emption settlement.

30 May, 1862, c. 86, s. 7, v. 12, p. 410.

SEC. 2267. All claimants of pre-emption rights, under the two preceding sections, shall, when no shorter time is prescribed by law, make the proper proof and payment for the lands claimed within thirty months after the date prescribed therein, respectively, for filing their declaratory notices, has expired.

14 July, 1870, c. 272, s. 2, v. 16, p. 279. 3 March, 1871, Res. 52, v. 16, p. 601.

SEC. 2268. Where a pre-emptor has taken the initiatory steps required by law in regard to actual settlement, and is called away from such settlement by being engaged in the military or naval service of the United States, and by reason of such absence is unable to appear at the district land-office to make before the register or receiver the affidavit, proof, and payment, respectively, required by the preceding provisions of this chapter, the time for filing such affidavit and making final proof and entry or location shall be extended six months after the expiration of his term of service, upon satisfactory proof by affidavit, or the testimony of witnesses, that such pre-emptor is so in the service, being filed with the register of the land-office for the district in which his settlement is made.

21 March, 1864, c. 38, s. 5, v. 13, p. 35.

SEC. 2269. Where a party entitled to claim the benefits of the pre-emption laws dies before consummating his claim, by filing in due time all the papers essential to the establishment of the same, it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same; but the entry in such cases shall be made in favor of the heirs of the deceased pre-emptor, and a patent thereon shall cause the title to inure to such heirs, as if their names had been specially mentioned.

3 March, 1843, c. 86, s. 2, v. 5, p. 620.

SEC. 2270. Whenever the vacancy of the office either of register or receiver, or of both, renders it impossible for the claimant to comply with any requisition of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming, in respect to any matter essential to the establishment of his claim; but such requisition must be complied with within the same period after the disability is removed as would have been allowed had such disability not existed.

3 March, 1843, c. 86, s. 6, v. 5, p. 620.

SEC. 2271. The provisions of this chapter shall be so construed as not to confer on any one a right of pre-emption, by reason of a settlement made on a tract theretofore disposed of, when such disposal has not been confirmed by the General Land-Office, on account of any alleged defect therein.

26 Aug., 1842, c. 205, v. 5, p. 534.

SEC. 2272. Nothing in the provisions of this chapter shall be con-

strued to preclude any person, who may have filed a notice of intention to claim any tract of land by pre-emption, from the right allowed by law to others to purchase such tract by private entry after the expiration of the right of pre-emption.

3 March, 1843, c. 86, s. 9, v. 5, p. 621.

SEC. 2273. When two or more persons settle on the same tract of land, the right of pre-emption shall be in him who made the first settlement, provided such person conforms to the other provision of the law; and all questions as to the right of pre-emption arising between different settlers shall be determined by the register and receiver of the district within which the land is situated; and appeals from the decision of district officers, in cases of contest for the right of pre-emption, shall be made to the Commissioner of the General Land-Office, whose decision shall be final, unless appeal therefrom be taken to the Secretary of the Interior.

4 Sept., 1841, c. 16, s. 11, v. 5, p. 456. 12 June, 1858, c. 154, s. 10, v. 11, p. 326. *Barnard vs. Ashley*, 18 How., 43; *Garland vs. Wynn*, 20 How., 6; *Lindsey vs. Hawse*, 2 Bl. 554; *Minnesota vs. Batchelder*, 1 Wall., 109; *Johnson vs. Tawsley*, 13 Wall., 72.

SEC. 2274. When settlements have been made upon agricultural public lands of the United States, prior to the survey thereof, and it has been or shall be ascertained, after the public surveys have been extended over such lands, that two or more settlers have improvements upon the same legal subdivision, it shall be lawful for such settlers to make joint entry of their lands at the local land-office, or for either of said settlers to enter into contract with his co-settlers to convey to them their portion of said land after a patent is issued to him, and, after making said contract, to file a declaratory statement in his own name, and prove up and pay for said land, and proof of joint occupation by himself and others, and of such contract with them made, shall be equivalent to proof of sole occupation and pre-emption by the applicant: *Provided*, That in no case shall the amount patented under this section exceed one hundred and sixty acres, nor shall this section apply to lands not subject to homestead or pre-emption entry.

3 March, 1873, c. 283, s. 1, v. 17, p. 609.

SEC. 2275. Where settlements, with a view to pre-emption, have been made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the pre-emption claim of such settler; and if they, or either of them, have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by pre-emptors; and other lands are also appropriated to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever.

26 Feb., 1859, c. 58, v. 11, p. 385.

SEC. 2276. The lands appropriated by the preceding section shall be selected, within the same land-district, in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a

unsurveyed lands, the pre-emption claimant shall be in all cases required to file his declaratory statement within three months from the date of the receipt at the district land-office, of the approved plat of the township embracing such pre-emption settlement.

30 May, 1862, c. 86, s. 7, v. 12, p. 410.

SEC. 2267. All claimants of pre-emption rights, under the two preceding sections, shall, when no shorter time is prescribed by law, make the proper proof and payment for the lands claimed within thirty months after the date prescribed therein, respectively, for filing their declaratory notices, has expired.

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4 Sept., 1841, c. 16, s. 11, v. 5, p. 456. 12 June, 1858, c. 154, s. 10, v. 11, p. 326. *Barnard vs. Ashley*, 18 How., 43; *Garland vs. Wynn*, 20 How., 6; *Lindsey vs. Hawse*, 2 Bl. 554; *Minnesota vs. Batchelder*, 1 Wall., 109; *Johnson vs. Tawsley*, 13 Wall., 72.

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3 March, 1873, c. 283, s. 1, v. 17, p. 609.

SEC. 2275. Where settlements, with a view to pre-emption, have been made before the survey of the lands in the field, which are found to have been made on sections sixteen or thirty-six, those sections shall be subject to the pre-emption claim of such settler; and if they, or either of them, have been or shall be reserved or pledged for the use of schools or colleges in the State or Territory in which the lands lie, other lands of like quantity are appropriated in lieu of such as may be patented by pre-emptors; and other lands are also appropriated to compensate deficiencies for school purposes, where sections sixteen or thirty-six are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever.

26 Feb., 1859, c. 58, v. 11, p. 385.

SEC. 2276. The lands appropriated by the preceding section shall be selected, within the same land-district, in accordance with the following principles of adjustment, to wit: For each township, or fractional township, containing a greater quantity of land than three-quarters of an entire township, one section; for a fractional township, containing a

greater quantity of land than one-half, and not more than three-quarters, of a township, three-quarters of a section; for a fractional township, containing a greater quantity of land than one-quarter, and not more than one-half, of a township, one-half section; and for a fractional township, containing a greater quantity of land than one entire section, and not more than one-quarter of a township, one quarter-section of land.

26 Feb., 1859, c. 58, v. 11, p. 385. 20 May, 1826, c. 83, s. 1, v. 4, p., 179.

SEC. 2277. All warrants for military bounty-lands, which are issued under any law of the United States, shall be received in payment of pre-emption rights at the rate of one dollar and twenty-five cents per acre, for the quantity of land therein specified; but where the land is rated at one dollar and twenty-five cents per acre, and does not exceed the area specified in the warrant, it must be taken in full satisfaction thereof.

22 March, 1852, c. 19, s. 1, v. 10, p. 3.

SEC. 2278. Agricultural-college scrip, issued to any State under the act approved July second, eighteen hundred and sixty-two, or acts amendatory thereof, shall be received from actual settlers in payment of pre-emption claims in the same manner and to the same extent as authorized in case of military bounty-land warrants, by the preceding section.

1 July, 1870, c. 196, v. 16, p. 186.

SEC. 2279. No person shall have the right of pre-emption to more than one hundred and sixty acres along the line of railroads within the limits granted by any act of Congress.

3 March, 1853, c. 143, v. 10, p. 244.

SEC. 2280. Any settler on lands heretofore reserved on account of claims under French, Spanish, or other grants, which have been or may be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by the preceding provisions of this chapter, after the lands have been released from reservation, in the same manner as if no reservation had existed.

3 March, 1853, c. 143, v. 10, p. 244.

SEC. 2281. All settlers on public lands which have been or may be withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them; but they shall file the proper notices of their claims and make proof and payment as in other cases.

27 March, 1854, c. 25, v. 10, p. 269. 14 July, 1870, c. 272, s. 2, v. 16, p. 279.

SEC. 2282. Nothing contained in this chapter shall delay the sale of any of the public lands beyond the time appointed by the proclamation of the President.

4 Sept., 1841, c. 16, s. 14, v. 5, p. 457.

SEC. 2283. The Osage Indian trust and diminished-reserve lands in the State of Kansas, excepting the sixteenth and thirty-sixth sections in each township, shall be subject to disposal, for cash only, to actual

settlers, in quantities not exceeding one hundred and sixty acres, or one quarter-section to each, in compact form, in accordance with the general principles of the pre-emption laws, under the direction of the Commissioner of the General Land-Office; but claimants shall file their declaratory statements as prescribed in other cases upon unoffered lands, and shall pay for the tracts, respectively, settled upon within one year from date of settlement where the plat of survey is on file at that date, and within one year from the filing of the township plat in the district office where such plat is not on file at date of settlement.

9 May, 1872, c. 149, s. 1, v. 17, p. 90.

SEC. 2284. The sale or transfer of his claim upon any portion of these lands by any settler prior to the twenty-sixth day of April, eighteen hundred and seventy-one, shall not operate to preclude the right of entry, under the provisions of the preceding section, upon another tract settled upon subsequent to such sale or transfer; but satisfactory proof of good faith must be furnished upon such subsequent settlement.

9 May, 1872, c. 149, s. 3, v. 17, p. 90.

SEC. 2285. The restrictions of the pre-emption laws, contained in sections twenty-two hundred and sixty and twenty-two hundred and sixty-one, shall not apply to any settler on the Osage Indian trust and diminished-reserve lands in the State of Kansas, who was actually residing on his claim on the ninth day of May, eighteen hundred and seventy-two.

9 May, 1872, c. 149, s. 3, v. 17, p. 90.

SEC. 2286. There shall be granted to the several counties or parishes of each State and Territory, where there are public lands, at the minimum price for which public lands of the United States are sold, the right of pre-emption to one quarter-section of land, in each of the counties or parishes, in trust for such counties or parishes, respectively, for the establishment of seats of justice therein; but the proceeds of the sale of each of such quarter-section shall be appropriated for the purpose of erecting public buildings in the county or parish for which it is located, after deducting therefrom the amount originally paid for the same. And the seat of justice for such counties or parishes, respectively, shall be fixed previously to a sale of the adjoining lands within the county or parish for which the same is located.

26 May, 1824, c. 169, s. 1, v. 4, p. 50.

SEC. 2287. Any bona-fide settler under the homestead or pre-emption laws of the United States who has filed the proper application to enter not to exceed one quarter-section of the public lands in any district land-office, and who has been subsequently appointed a register or receiver, may perfect the title to the land under the pre-emption laws by furnishing the proofs and making the payments required by law, to the satisfaction of the Commissioner of the General Land-Office.

20 April, 1871, c. 21, s. 16, v. 17, p. 10.

SEC. 2288. Any person who has already settled or hereafter may settle on the public lands, either by pre-emption, or by virtue of the homestead law or any amendments thereto, shall have the right to transfer, by warranty against his own acts, any portion of his pre-emption or homestead for church, cemetery, or school purposes, or for the right of

way of railroads across such pre-emption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their pre-emptions or homesteads.

Act of 3 March, 1873, c. 266, v. 17, p. 602.

CHAPTER FIVE.

HOMESTEADS.

- | | |
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SEC. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one quarter section or a less quantity of unappropriated public lands, upon which such person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents per acre; or eighty acres or less of such unappropriated lands, at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same have been surveyed. And every person owning and residing on land may, under the provisions of this section, enter other land

lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

20 May, 1862, c. 75, s. 1, v. 12, p. 392.

SEC. 2290. The person applying for the benefit of the preceding section shall, upon application to the register of the land-office in which he is about to make such entry, make affidavit before the register or receiver that he is the head of a family, or is twenty-one years or more of age, or has performed service in the Army or Navy of the United States, and that such application is made for his exclusive use and benefit, and that his entry is made for the purpose of actual settlement and cultivation, and not either directly or indirectly for the use or benefit of any other person; and upon filing such affidavit with the register or receiver, on payment of five dollars when the entry is of not more than eighty acres, and on payment of ten dollars when the entry is for more than eighty acres, he shall thereupon be permitted to enter the amount of land specified.

21 June, 1866, c. 127, s. 2, v. 14, p. 67. 20 May, 1862, c. 75, s. 2, v. 12, p. 392. 21 March, 1864, c. 38, s. 2, v. 13, p. 35.

SEC. 2291. No certificate, however, shall be given, or patent issued therefor, until the expiration of five years from the date of such entry; and if at the expiration of such time, or at any time within two years thereafter, the person making such entry; or if he be dead, his widow; or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death, proves by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit, and makes affidavit that no part of such land has been alienated, except as provided in section twenty-two hundred and eighty-eight, and that he, she, or they will bear true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time citizens of the United States, shall be entitled to a patent, as in other cases provided by law.

21 June, 1866, c. 127, s. 2, v. 14, p. 67.

SEC. 2292. In case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of such infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children, for the time being, have their domicile, sell the land for the benefit of such infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office-fees and sum of money above specified.

21 June, 1866, c. 127, s. 2, v. 14, p. 67.

SEC. 2293. In case of any person desirous of availing himself of the benefits of this chapter; but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land-office which the preceding sections require; and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona-fide improvement and settlement have been made, such person may make the affidavit

required by law before the officer commanding in the branch of the service in which the party is engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, provided the application and affidavit are accompanied by the fee and commissions as required by law.

21 March, 1864, c. 38, s. 4, v. 13, p. 35.

SEC. 2294. In any case in which the applicant for the benefit of the homestead, and whose family or some member thereof, is residing on the land which he desires to enter, and upon which a bona-fide improvement and settlement have been made, is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land-office, it may be lawful for him to make the affidavit required by law before the clerk of the court for the county in which the applicant is an actual resident, and to transmit the same, with the fee and commissions, to the register and receiver.

21 March, 1864, c. 38, s. 3, v. 13, p. 35.

SEC. 2295. The register of the land-office shall note all applications under the provisions of this chapter, on the tract-books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land Office, together with the proof upon which they have been founded.

20 May, 1862, c. 75, s. 3, v. 12, p. 393.

SEC. 2296. No lands acquired under the provisions of this chapter shall in any event become liable to the satisfaction of any debt contracted prior to the issuing of the patent therefor.

20 May, 1862, c. 75, s. 4, v. 12, p. 393.

SEC. 2297. If, at any time after the filing of the affidavit, as required in section twenty-two hundred and ninety, and before the expiration of the five years mentioned in section twenty-two hundred and ninety-one, it is proved, after due notice to the settler, to the satisfaction of the register of the land-office, that the person having filed such affidavit has actually changed his residence, or abandoned the land for more than six months at any time, then and in that event the land so entered shall revert to the Government.

20 May, 1862, c. 75, s. 5, v. 12, p. 393.

SEC. 2298. No person shall be permitted to acquire title to more than one quarter-section under the provisions of this chapter.

20 May, 1862, c. 75, s. 6, v. 12, p. 393.

SEC. 2299. Nothing contained in this chapter shall be so construed as to impair or interfere in any manner with existing pre-emption rights; and all persons who may have filed their applications for a pre-emption right prior to the twentieth day of May, eighteen hundred and sixty-two, shall be entitled to all the privileges of this chapter.

20 May, 1862, c. 75, s. 6, v. 12, p. 393.

SEC. 2300. No person who has served, or may hereafter serve, for a period not less than fourteen days in the Army or Navy of the United States, either regular or volunteer, under the laws thereof, during the

existence of an actual war, domestic or foreign, shall be deprived of the benefits of this chapter on account of not having attained the age of twenty-one years.

20 May, 1862, c. 75, s. 6, v. 12, p. 393.

SEC. 2301. Nothing in this chapter shall be so construed as to prevent any person who has availed himself of the benefits of section twenty-two hundred and eighty-nine, from paying the minimum price for the quantity of land so entered, at any time before the expiration of the five years, and obtaining a patent therefor from the Government, as in other cases directed by law, on making proof of settlement and cultivation as provided by law, granting pre-emption rights.

20 May, 1862, c. 75, s. 8, v. 12, p. 393.

SEC. 2302. No distinction shall be made in the construction or execution of this chapter, on account of race or color; nor shall any mineral lands be liable to entry and settlement under its provisions.

21 June, 1866, c. 127, s. 1, v. 14, p. 67.

SEC. 2303. All the public lands in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida, shall be disposed of in no other manner than according to the terms and stipulations contained in the preceding provisions of this chapter.

21 June, 1866, c. 127, s. 1, v. 14, p. 67.

SEC. 2304. Every private soldier and officer who has served in the Army of the United States during the recent rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the Government, including the troops mustered into the service of the United States by virtue of the third section of an act approved February thirteen, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the Navy of the United States, or in the Marine Corps, during the rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the Government, shall, on compliance with the provisions of this chapter, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands not exceeding one hundred and sixty acres, or one quarter-section, to be taken in compact form, according to legal subdivisions, including the alternate reserved sections of public lands along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States; but such homestead settler shall be allowed six months after locating his homestead, and filing his declaratory statement, within which to make his entry and commence his settlement and improvement.

8 June, 1872, c. 338, s. 1, v. 17, p. 333.

SEC. 2305. The time which the homestead settler has served in the Army, Navy, or Marine Corps shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served; but no patent shall issue to any homestead settler who has not resided

upon, improved, and cultivated his homestead for a period of at least one year after he shall have commenced his improvements.

8 June, 1872, c. 338, s. 1, v. 17, p. 333.

SEC. 2306. Every person entitled, under the provisions of section twenty-three hundred and four, to enter a homestead who may have heretofore entered, under the homestead laws, a quantity of land less than one hundred and sixty acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

8 June, 1872, c. 338, s. 2, v. 17, p. 333.

SEC. 2307. In case of the death of any person who would be entitled to a homestead under the provisions of section twenty-three hundred and four, his widow, if unmarried, or in case of her death or marriage, then his minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this chapter, subject to all the provisions as to settlement and improvements therein contained; but if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

8 June, 1872, c. 338, s. 3, v. 17, p. 333.

SEC. 2308. Where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the Army or Navy of the United States, his services therein shall, in the administration of such homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered. And if his entry has been canceled by reason of his absence from such tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored; but if such tract has been disposed of, the party may enter another tract subject to entry under the homestead laws, and his right to a patent therefor may be determined by the proofs touching his residence and cultivation of the first tract and his absence therefrom in such service.

8 June, 1872, c. 338, s. 4, v. 17, p. 333.

SEC. 2309. Every soldier, sailor, marine, officer, or other person coming within the provisions of section twenty-three hundred and four, may, as well by an agent as in person, enter upon such homestead by filing a declaratory statement, as in pre-emption cases; but such claimant in person shall within the time prescribed make his actual entry, commence settlements and improvements on the same, and thereafter fulfill all the requirements of law.

8 June, 1872, c. 338, s. 5, v. 17, p. 334.

SEC. 2310. Each of the chiefs, warriors, and heads of families of the Stockbridge Munsee tribes of Indians, residing in the county of Shawana, State of Wisconsin, may, under the direction of the Secretary of the Interior, enter a homestead and become entitled to all the benefits of this chapter, free from any fee or charge; and any part of their present reservation, which is abandoned for that purpose, may be sold, under the direction of the Secretary of the Interior, and the proceeds

applied for the benefit of such Indians as may settle on homesteads, to aid them in improving the same.

3 March, 1865, c. 127, s. 4, v. 13, p. 562.

SEC. 2311. The homestead secured, by virtue of the preceding section, shall not be subject to any tax, levy, or sale; nor shall it be sold, conveyed, mortgaged, or in any manner encumbered, except upon the decree of the district court of the United States, as provided in the following section.

3 March, 1865, c. 127, s. 4, v. 13, p. 562.

SEC. 2312. Whenever any of the chiefs, warriors, or heads of families of the tribes mentioned in section twenty-three hundred and ten, having filed with the clerk of the district court of the United States a declaration of his intention to become a citizen of the United States, and to dissolve all relations with any Indian tribe, two years previous thereto, appears in such court, and proves to the satisfaction thereof, by the testimony of two citizens, that for five years last past he has adopted the habits of civilized life; that he has maintained himself and family by his own industry; that he reads and speaks the English language; that he is well disposed to become a peaceable and orderly citizen; and that he has sufficient capacity to manage his own affairs; the court may enter a decree admitting him to all the rights of a citizen of the United States, and thenceforth he shall be no longer held or treated as a member of any Indian tribe, but shall be entitled to all the rights and privileges, and be subject to all the duties and liabilities to taxation of other citizens of the United States. But nothing herein contained shall be construed to deprive such chiefs, warriors, or heads of families of annuities to which they are or may be entitled.

3 March, 1865, c. 127, s. 4, v. 13, p. 562.

SEC. 2313. The unoccupied lands in the reservation made for the Ottawa and Chippewa Indians, of Michigan, by the treaty of July thirty-one, eighteen hundred and fifty-five, shall be open to homestead entry for six months from the tenth day of June, eighteen hundred and seventy-two, by Indians only of those tribes, who have not made selections or purchases under the treaty, including such members of the tribes as have become of age since the expiration of the ten years named in the treaty; and every Indian so entitled shall be permitted to make his homestead entry, at the local land-office, within such six months, of not exceeding one hundred and sixty acres, or one quarter-section of minimum, or eighty acres of double minimum land, on making proper proof of his right, under such rules as may be prescribed by the Secretary of the Interior.

10 June, 1872, c. 424, s. 2, v. 17, p. 381.

SEC. 2314. The collector of customs for the district in which such land is situated, is authorized, and it is made his duty, to select for such minor children as would be entitled, under the preceding section, as the heirs of any Indian.

10 June, 1872, c. 424, s. 2, v. 17, p. 381.

SEC. 2315. All actual, permanent, bona-fide settlers on any of such lands who settled prior to the first day of January, eighteen hundred and seventy-two, shall be entitled to enter either under the home-

stead laws or to pay for at the minimum or double minimum price, as the case may be, not exceeding one hundred and sixty acres of the former or eighty acres of the latter class of land on making proof of his settlement and continued residence before the expiration of six months from the tenth day of June, eighteen hundred and seventy-two.

10 June, 1872, c. 424, s. 2, v. 17, p. 381.

SEC. 2316. All selections of such lands by Indians heretofore made and regularly reported and recognized as valid and proper by the Secretary of the Interior and Commissioner of Indian Affairs, shall be patented to the respective Indians making the same; and all sales heretofore made and reported, where the same are regular and not in conflict with such selections, or with any other valid adverse right, except of the United States, are confirmed, and patents shall issue thereon as in other cases according to law.

10 June, 1872, c. 424, s. 4, v. 17, p. 381.

SEC. 2317. Every person having a homestead on the public domain, under the provisions of this chapter, who, at the end of the third year of his residence thereon, shall have had under cultivation, for two years, one acre of timber, the trees thereon not being more than twelve feet apart each way, and in a good, thrifty condition, for each and every sixteen acres of such homestead, shall, upon due proof of the fact by two credible witnesses, receive his patent for such homestead.

3 March, 1873, c. 277, s. 4, v. 17, p. 606.

CHAPTER SIX.

MINERAL LANDS AND MINING RESOURCES.

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SEC. 2318. In all cases lands valuable for minerals shall be reserved from sale, except as otherwise expressly directed by law.

4 July, 1866, c. 166, s. 5, v. 14, p. 86.

SEC. 2319. All valuable mineral deposits in lands belonging to the United States, both surveyed and unsurveyed, are hereby declared to be free and open to exploration and purchase, and the lands in which they are found to occupation and purchase, by citizens of the United States and those who have declared their intention to become such, under regulations prescribed by law, and according to the local customs or rules of miners in the several mining-districts, so far as the same are applicable and not inconsistent with the laws of the United States.

10 May, 1872, c. 152, s. 1, v. 17, p. 91. U. S. *vs.* Gear, 3 How., 120.

SEC. 2320. Mining claims upon veins or lodes of quartz or other rock in place bearing gold, silver, cinnabar, lead, tin, copper, or other valuable deposits, heretofore located, shall be governed as to length along the vein or lode by the customs, regulations, and laws in force at the date of their location. A mining-claim located after the tenth day of May, eighteen hundred and seventy-two, whether located by one or more persons, may equal, but shall not exceed, one thousand five hundred feet in length along the vein or lode; but no location of a mining-claim shall be made until the discovery of the vein or lode within the limits of the claim located. No claim shall extend more than three hundred feet on each side of the middle of the vein at the surface, nor shall any claim be limited by any mining regulation to less than twenty-five feet on each side of the middle of the vein at the surface, except where adverse rights existing on the tenth day of May, eighteen hundred and seventy-two, render such limitation necessary. The end-lines of each claim shall be parallel to each other.

10 May, 1872, c. 152, s. 2, v. 17, p. 91.

SEC. 2321. Proof of citizenship, under this chapter, may consist, in the case of an individual, of his own affidavit thereof; in the case of an association of persons unincorporated, of the affidavit of their authorized agent, made on his own knowledge, or upon information and belief; and in the case of a corporation organized under the laws of the United States, or of any State or Territory thereof, by the filing of a certified copy of their charter or certificate of incorporation.

10 May, 1872, c. 152, s. 7, v. 17, p. 94.

SEC. 2322. The locators of all mining locations heretofore made or which shall hereafter be made, on any mineral vein, lode, or ledge, situated on the public domain, their heirs and assigns, where no adverse claim exists on the tenth day of May, eighteen hundred and seventy-two, so long as they comply with the laws of the United States, and with State, Territorial, and local regulations not in conflict with the laws of the United States governing their possessory title, shall have the exclusive right of possession and enjoyment of all the surface included within the lines of their locations, and of all veins, lodes, and ledges throughout their entire depth, the top or apex of which lies inside of such surface-lines extended downward vertically, although such veins, lodes, or ledges may so far depart from a perpendicular in their course downward as to extend outside the vertical side-lines of such surface locations. But their right of possession to such outside parts of such veins or ledges shall be confined to such portions thereof as lie between vertical planes drawn downward as above described, through the end-lines of their locations, so continued in their own direction that such planes will intersect such exterior parts of such veins or ledges. And nothing in this section shall authorize the locator or possessor of a vein or lode which extends in its downward course beyond the vertical lines of his claim to enter upon the surface of a claim owned or possessed by another.

10 May, 1872, c. 152, s. 3, v. 17, p. 91.

SEC. 2323. Where a tunnel is run for the development of a vein or lode, or for the discovery of mines, the owners of such tunnel shall have the right of possession of all veins or lodes within three thousand feet from the face of such tunnel on the line thereof not previously known to exist, discovered in such tunnel, to the same extent as if discovered from the surface; and locations on the line of such tunnel of veins or lodes not appearing on the surface, made by other parties after the commencement of the tunnel, and while the same is being prosecuted with reasonable diligence, shall be invalid; but failure to prosecute the work on the tunnel for six months shall be considered as an abandonment of the right to all undiscovered veins on the line of such tunnel.

10 May, 1872, c. 152, s. 4, v. 17, p. 92.

SEC. 2324. The miners of each mining-district may make regulations not in conflict with the laws of the United States, or with the laws of the State or Territory in which the district is situated, governing the location, manner of recording, amount of work necessary to hold possession of a mining-claim, subject to the following requirements: The location must be distinctly marked on the ground so that its boundaries can be readily traced. All records of mining-claims hereafter made shall contain the name or names of the locators, the date of the location, and such a description of the claim or claims located by reference to some natural object or permanent monument as will identify the claim. On each claim located after the tenth day of May, eighteen hundred and seventy-two, and until a patent has been issued therefor, not less than one hundred dollars' worth of labor shall be performed or improvements made during each year. On all claims located prior to the tenth day of May, eighteen hundred and seventy-two, ten dollars' worth of labor shall be performed or improvements made by the tenth day of June, eighteen hundred and seventy-four, and each year there-

after, for each one hundred feet in length along the vein until a patent has been issued therefor; but where such claims are held in common, such expenditure may be made upon any one claim; and upon a failure to comply with these conditions, the claim or mine upon which such failure occurred shall be open to relocation in the same manner as if no location of the same had ever been made, provided that the original locators, their heirs, assigns, or legal representatives, have not resumed work upon the claim after failure and before such location. Upon the failure of any one of several co-owners to contribute his proportion of the expenditures required hereby, the co-owners who have performed the labor or made the improvements may, at the expiration of the year, give such delinquent co-owner personal notice in writing or notice by publication in the newspaper published nearest the claim, for at least once a week for ninety days, and if at the expiration of ninety days after such notice in writing or by publication such delinquent should fail or refuse to contribute his proportion of the expenditure required by this section, his interest in the claim shall become the property of his co-owners who have made the required expenditures.

10 May, 1872, c. 152, s. 5, v. 17, p. 92.

Sec. 2325. A patent for any land claimed and located for valuable deposits may be obtained in the following manner: Any person, association, or corporation authorized to locate a claim under this chapter, having claimed and located a piece of land for such purposes, who has, or have, complied with the terms of this chapter, may file in the proper land-office an application for a patent, under oath, showing such compliance, together with a plat and field-notes of the claim or claims in common, made by or under the direction of the United States surveyor-general, showing accurately the boundaries of the claim or claims, which shall be distinctly marked by monuments on the ground, and shall post a copy of such plat, together with a notice of such application for a patent, in a conspicuous place on the land embraced in such plat previous to the filing of the application for a patent, and shall file an affidavit of at least two persons that such notice has been duly posted, and shall file a copy of the notice in such land-office, and shall thereupon be entitled to a patent for the land, in the manner following: The register of the land-office, upon the filing of such application, plat, field-notes, notices, and affidavits, shall publish a notice that such application has been made, for the period of sixty days, in a newspaper to be by him designated as published nearest to such claim; and he shall also post such notice in his office for the same period. The claimant at the time of filing this application, or at any time thereafter, within the sixty days of publication, shall file with the register a certificate of the United States surveyor-general that five hundred dollars' worth of labor has been expended or improvements made upon the claim by himself or grantors; that the plat is correct, with such further description by such reference to natural objects or permanent monuments as shall identify the claim, and furnish an accurate description, to be incorporated in the patent. At the expiration of the sixty days of publication the claimant shall file his affidavit, showing that the plat and notice have been posted in a conspicuous place on the claim during such period of publication. If no adverse claim shall have been filed with the register and the receiver of the proper land-office at the expi-

ration of the sixty days of publication, it shall be assumed that the applicant is entitled to a patent, upon the payment to the proper officer of five dollars per acre, and that no adverse claim exists; and thereafter no objection from third parties to the issuance of a patent shall be heard, except it be shown that the applicant has failed to comply with the terms of this chapter.

10 May, 1872, c. 152, s. 6, v. 7, p. 92.

SEC. 2326. Where an adverse claim is filed during the period of publication, it shall be upon oath of the person or persons making the same, and shall show the nature, boundaries, and extent of such adverse claim, and all proceedings, except the publication of notice and making and filing of the affidavit thereof, shall be stayed until the controversy shall have been settled or decided by a court of competent jurisdiction, or the adverse claim waived. . It shall be the duty of the adverse claimant, within thirty days after filing his claim, to commence proceedings in a court of competent jurisdiction, to determine the question of the right of possession, and prosecute the same with reasonable diligence to final judgment; and a failure so to do shall be a waiver of his adverse claim. After such judgment shall have been rendered, the party entitled to the possession of the claim, or any portion thereof, may, without giving further notice, file a certified copy of the judgment-roll with the register of the land-office, together with the certificate of the surveyor-general that the requisite amount of labor has been expended or improvements made thereon, and the description required in other cases, and shall pay to the receiver five dollars per acre for his claim, together with the proper fees, whereupon the whole proceedings and the judgment-roll shall be certified by the register to the Commissioner of the General Land-Office, and a patent shall issue thereon for the claim, or such portions thereof as the applicant shall appear, from the decision of the court, to rightly possess. If it appears from the decision of the court that several parties are entitled to separate and different portions of the claim, each party may pay for his portion of the claim, with the proper fees, and file the certificate and description by the surveyor-general, whereupon the register shall certify the proceedings and judgment-roll to the Commissioner of the General Land-Office, as in the preceding case, and patents shall issue to the several parties according to their respective rights. Nothing herein contained shall be construed to prevent the alienation of the title conveyed by a patent for a mining-claim to any person whatever.

10 May, 1872, c. 152, s. 7, v. 17, p. 93.

SEC. 2327. The description of vein or lode claims, upon surveyed lands, shall designate the location of the claim with reference to the lines of the public surveys, but need not conform therewith; but where a patent shall be issued for claims upon unsurveyed lands, the surveyor-general, in extending the surveys, shall adjust the same to the boundaries of such patented claim, according to the plat or description thereof, but so as in no case to interfere with or change the location of any such patented claim.

10 May, 1872, c. 152, s. 8, v. 17, p. 94.

SEC. 2328. Applications for patents for mining-claims under former

laws now pending may be prosecuted to a final decision in the General Land-Office; but in such cases where adverse rights are not affected thereby, patents may issue in pursuance of the provisions of this chapter; and all patents for mining-claims upon veins or lodes heretofore issued shall convey all the rights and privileges conferred by this chapter where no adverse rights existed on the tenth day of May, eighteen hundred and seventy-two.

10 May, 1872, c. 152, s. 9, v. 17, p. 94.

SEC. 2329. Claims usually called "placers," including all forms of deposit, excepting veins of quartz, or other rock in place, shall be subject to entry and patent, under like circumstances and conditions, and upon similar proceedings, as are provided for vein or lode claims; but where the lands have been previously surveyed by the United States, the entry in its exterior limits shall conform to the legal subdivisions of the public lands.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2330. Legal subdivisions of forty acres may be subdivided into ten-acre tracts; and two or more persons, or associations of persons, having contiguous claims of any size, although such claims may be less than ten acres each, may make joint entry thereof; but no location of a placer-claim, made after the ninth day of July, eighteen hundred and seventy, shall exceed one hundred and sixty acres for any one person or association of persons, which location shall conform to the United States surveys; and nothing in this section contained shall defeat or impair any bona-fide pre-emption or homestead claim upon agricultural lands, or authorize the sale of the improvements of any bona-fide settler to any purchaser.

9 July, 1870, c. 235, s. 12, v. 16, p. 217.

SEC. 2331. Where placer claims are upon surveyed lands, and conform to legal subdivisions, no further survey or plat shall be required, and all placer-mining claims located after the tenth day of May, eighteen hundred and seventy-two, shall conform as near as practicable with the United States system of public-land surveys, and the rectangular subdivisions of such surveys, and no such location shall include more than twenty acres for each individual claimant; but where placer-claims cannot be conformed to legal subdivisions, survey and plat shall be made as on unsurveyed lands; and where by the segregation of mineral land in any legal subdivision a quantity of agricultural land less than forty acres remains, such fractional portion of agricultural land may be entered by any party qualified by law, for homestead or pre-emption purposes.

10 May, 1872, c. 152, s. 10, v. 17, p. 94.

SEC. 2332. Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining-claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent thereto under this chapter, in the absence of any adverse claim; but nothing in this chapter shall be deemed to impair any lien which may have attached in any way whatever to

any mining-claim or property thereto attached prior to the issuance of a patent.

9 July, 1870, c. 235, s. 13, v. 16, p. 217.

SEC. 2333. Where the same person, association, or corporation is in possession of a placer-claim, and also a vein or lode included within the boundaries thereof, application shall be made for a patent for the placer-claim, with the statement that it includes such vein or lode, and in such case a patent shall issue for the placer-claim, subject to the provisions of this chapter, including such vein or lode, upon the payment of five dollars per acre for such vein or lode claim, and twenty-five feet of surface on each side thereof. The remainder of the placer-claim, or any placer-claim not embracing any vein or lode claim, shall be paid for at the rate of two dollars and fifty cents per acre, together with all costs of proceedings; and where a vein or lode, such as is described in section twenty-three hundred and twenty, is known to exist within the boundaries of a placer-claim, an application for a patent for such placer-claim which does not include an application for the vein or lode claim shall be construed as a conclusive declaration that the claimant of the placer-claim has no right of possession of the vein or lode claim; but where the existence of a vein or lode in a placer-claim is not known, a patent for the placer-claim shall convey all valuable mineral and other deposits within the boundaries thereof.

10 May, 1872, c. 152, s. 11, v. 17, p. 94.

SEC. 2334. The surveyor-general of the United States may appoint in each land-district containing mineral lands as many competent surveyors as shall apply for appointment to survey mining-claims. The expenses of the survey of vein or lode claims, and the survey and subdivision of placer-claims into smaller quantities than one hundred and sixty acres, together with the cost of publication of notices, shall be paid by the applicants, and they shall be at liberty to obtain the same at the most reasonable rates, and they shall also be at liberty to employ any United States deputy surveyor to make the survey. The Commissioner of the General Land-Office shall also have power to establish the maximum charges for surveys and publication of notices under this chapter; and, in case of excessive charges for publication, he may designate any newspaper published in a land-district where mines are situated for the publication of mining-notices in such district, and fix the rates to be charged by such paper; and, to the end that the Commissioner may be fully informed on the subject, each applicant shall file with the register a sworn statement of all charges and fees paid by such applicant for publication and surveys, together with all fees and money paid the register and the receiver of the land-office, which statement shall be transmitted, with the other papers in the case, to the Commissioner of the General Land-Office.

10 May, 1872, c. 152, s. 12, v. 17, p. 95.

SEC. 2335. All affidavits required to be made under this chapter may be verified before any officer authorized to administer oaths within the land-district where the claims may be situated, and all testimony and proofs may be taken before any such officer, and, when duly certified by the officer taking the same, shall have the same force and effect as if taken before the register and receiver of the land-office. In cases of contest as to the mineral or agricultural character of land, the testi-

money and proofs may be taken as herein provided on personal notice of at least ten days to the opposing party; or if such party cannot be found, then by publication of at least once a week for thirty days in a newspaper, to be designated by the register of the land-office as published nearest to the location of such land; and the register shall require proof that such notice has been given.

10 May, 1872, c. 152, s. 13, v. 17, p. 95.

SEC. 2336. Where two or more veins intersect or cross each other, priority of title shall govern, and such prior location shall be entitled to all ore or mineral contained within the space of intersection; but the subsequent location shall have the right of way through the space of intersection for the purposes of the convenient working of the mine. And where two or more veins unite, the oldest or prior location shall take the vein below the point of union, including all the space of intersection.

10 May, 1872, c. 152, s. 14, v. 17, p. 96.

SEC. 2337. Where non-mineral land not contiguous to the vein or lode is used or occupied by the proprietor of such vein or lode for mining or milling purposes, such non-adjacent surface-ground may be embraced and included in an application for a patent for such vein or lode, and the same may be patented therewith, subject to the same preliminary requirements as to survey and notice as are applicable to veins or lodes; but no location hereafter made of such non-adjacent land shall exceed five acres, and payment for the same must be made at the same rate as fixed by this chapter for the superficies of the lode. The owner of a quartz-mill or reduction-works, not owning a mine in connection therewith, may also receive a patent for his mill-site, as provided in this section.

10 May, 1872, c. 152, s. 15, v. 17, p. 96.

SEC. 2338. As a condition of sale, in the absence of necessary legislation by Congress, the local legislature of any State or Territory may provide rules for working mines, involving easements, drainage, and other necessary means to their complete development; and those conditions shall be fully expressed in the patent.

26 July, 1866, c. 262, s. 5, v. 14, p. 252.

SEC. 2339. Whenever, by priority of possession, rights to the use of water for mining, agricultural, manufacturing, or other purposes, have vested and accrued, and the same are recognized and acknowledged by the local customs, laws, and the decisions of courts, the possessors and owners of such vested rights shall be maintained and protected in the same; and the right of way for the construction of ditches and canals for the purposes herein specified is acknowledged and confirmed; but whenever any person, in the construction of any ditch or canal, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

26 July, 1866, c. 262, s. 9, v. 14, p. 253.

SEC. 2340. All patents granted, or pre-emption or homesteads allowed, shall be subject to any vested and accrued water-rights, or rights to

ditches and reservoirs used in connection with such water-rights, as may have been acquired under or recognized by the preceding section.

9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2341. Wherever, upon the lands heretofore designated as mineral lands, which have been excluded from survey and sale, there have been homesteads made by citizens of the United States, or persons who have declared their intention to become citizens, which homesteads have been made, improved, and used for agricultural purposes, and upon which there have been no valuable mines of gold, silver, cinnabar, or copper discovered, and which are properly agricultural lands, the settlers or owners of such homesteads shall have a right of pre-emption thereto, and shall be entitled to purchase the same at the price of one dollar and twenty-five cents per acre, and in quantity not to exceed one hundred and sixty acres; or they may avail themselves of the provisions of chapter five of this Title, relating to "HOMESTEADS."

26 July, 1866, c. 262, s. 10, v. 14, p. 253.

SEC. 2342. Upon the survey of the lands described in the preceding section, the Secretary of the Interior may designate and set apart such portions of the same as are clearly agricultural lands, which lands shall thereafter be subject to pre-emption and sale as other public lands, and be subject to all the laws and regulations applicable to the same.

26 July, 1866, c. 262, s. 11, v. 14, p. 253.

SEC. 2343. The President is authorized to establish additional land-districts, and to appoint the necessary officers under existing laws, whenever he may deem the same necessary for the public convenience in executing the provisions of this chapter.

26 July, 1866, c. 252, s. 7, v. 14, p. 252.

SEC. 2344. Nothing contained in this chapter shall be construed to impair, in any way, rights or interests in mining property acquired under existing laws; nor to affect the provisions of the act entitled "An act granting to A. Sutro the right of way and other privileges to aid in the construction of a draining and exploring tunnel to the Comstock lode, in the State of Nevada," approved July twenty-five, eighteen hundred and sixty-six.

10 May, 1872, c. 152, s. 16, v. 17, p. 96. 9 July, 1870, c. 235, s. 17, v. 16, p. 218.

SEC. 2345. The provisions of the preceding sections of this chapter shall not apply to the mineral lands situated in the States of Michigan, Wisconsin, and Minnesota, which are declared free and open to exploration and purchase, according to legal subdivisions, in like manner as before the tenth day of May, eighteen hundred and seventy-two. And any bona-fide entries of such lands within the States named since the tenth day of May, eighteen hundred and seventy-two, may be patented without reference to any of the foregoing provisions of this chapter. Such lands shall be offered for public sale in the same manner, at the same minimum price, and under the same rights of pre-emption as other public lands.

18 Feb., 1873, c. 159, v. 17, p. 465.

SEC. 2346. No act passed at the first session of the Thirty-eighth Congress, granting lands to States or corporations to aid in the construction

of roads or for other purposes, or to extend the time of grants made prior to the thirtieth day of January, eighteen hundred and sixty-five, shall be so construed as to embrace mineral lands, which in all cases are reserved exclusively to the United States, unless otherwise specially provided in the act or acts making the grant. .

30 Jan., 1865, Res. No. 10, v. 13, p. 567.

SEC. 2347. Every person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter, by legal subdivisions, any quantity of vacant coal-lands of the United States not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

3 March, 1873, c. 279, s. 1, v. 17, p. 607.

SEC. 2348. Any person or association of persons severally qualified, as above provided, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference-right of entry, under the preceding section, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as above provided, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

SEC. 2349. All claims under the preceding section must be presented to the register of the proper land-district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor; but when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; and where the improvements shall have been made prior to the expiration of three months from the third day of March, eighteen hundred and seventy-three, sixty days from the expiration of such three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this section shall be allowed until the expiration of six months from the third day of March, eighteen hundred and seventy-three.

SEC. 2350. The three preceding sections shall be held to authorize only one entry by the same person or association of persons; and no association of persons any member of which shall have taken the benefit of such sections, either as an individual or as a member of any other association, shall enter or hold any other lands under the provisions thereof; and no member of any association which shall have taken the benefit of such sections shall enter or hold any other lands under their provisions; and all persons claiming under section twenty-three hundred and forty-eight shall be required to prove their respective rights and pay for the lands filed upon within one year from the

time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

Sec. 2351. In case of conflicting claims upon coal-lands where the improvements shall be commenced, after the third day of March, eighteen hundred and seventy-three, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference-right to purchase. And also where improvements have already been made prior to the third day of March, eighteen hundred and seventy-three, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties. The Commissioner of the General Land-Office is authorized to issue all needful rules and regulations for carrying into effect the provisions of this and the four preceding sections.

Sec. 2352. Nothing in the five preceding sections shall be construed to destroy or impair any rights which may have attached prior to the third day of March, eighteen hundred and seventy-three, or to authorize the sale of lands valuable for mines of gold, silver or copper.

CHAPTER SEVEN.

SALE AND DISPOSAL OF THE PUBLIC LANDS.

Sec.	Sec.
2353. Public sale of lands in half quarter-sections.	private entry and withdrawn, how to be opened to entry.
2354. Private sales, in what bodies.	2368. Certain lands located in good faith by claims arising under treaty of September 30, 1854, may be purchased, &c.
2355. Private sales, proceedings in.	2369. Mistakes in entry of lands, provisions for.
2356. No credit on sales of public lands.	2370. Mistakes in patent lands.
2357. Price of lands \$1.25 per acre.	2371. Mistakes in location of warrants.
2358. Public lands may be offered for sale in such proportions as the President chooses.	2372. Error in entry by mistake of numbers, proceedings upon.
2359. Advertisement of sales.	2373. Agreement and acts intended to prevent bids, penalty.
2360. Duration of sales.	2374. Agreements to pay premium to purchasers at public sales.
2361. Several certificates issued to two or more purchasers of same section.	2375. Recovery of premiums paid to purchasers at public sales.
2362. Purchase-money refunded where sale cannot be confirmed.	2376. Discovery of agreements to pay premiums by bill in equity.
2363. Refunding in certain cases, how done.	2377. Limitation of entries by agricultural-college scrip.
2364. Minimum price, how fixed when reservations sold.	2378. Grant to new States.
2365. Highest bidder when preferred in private sales.	2379. Selections and locations of lands granted in last section.
2366. What coins receivable in payment for public lands.	
2367. Lands in California subject to	

SEC. 2353. All the public lands, the sale of which is authorized by law, shall, when offered at public sale to the highest bidder, be offered in half quarter-sections.

24 April, 1820, c. 51, s. 1, v. 3, p. 566.—*U. S. vs. Gratiot*, 14 Pet., 526; *Oliver vs. Piatt*, 3 How., 333; *Brown's Lessee vs. Clements*, 3 How. 650; *Gazzam vs. Phillips*, 20 How., 372.

SEC. 2354. All the public lands, when offered at private sale, may be purchased, at the option of the purchaser, in entire sections, half-sections, quarter-sections, half-quarter sections, or quarter quarter-sections.

5 April, 1832, c. 65, v. 4, p. 503.

SEC. 2355. Every person making application at any of the land-offices of the United States for the purchase at private sale of a tract of land shall produce to the register a memorandum in writing, describing the tract, which he shall enter by the proper number of the section, half-section, quarter-section, half quarter-section, or quarter quarter-section, as the case may be, and of the township and range, subscribing his name thereto, which memorandum the register shall file and preserve in his office.

24 Feb., 1810, c. 11, s. 1, v. 2, p. 556.

SEC. 2356. Credit shall not be allowed for the purchase-money on the sale of any of the public lands, but every purchaser of land sold at public sale shall, on the day of purchase, make complete payment therefor; and the purchaser at private sale shall produce to the register of the land-office a receipt from the Treasurer of the United States, or from the receiver of public moneys of the district, for the amount of the purchase-money on any tract, before he enters the same at the land-office; and if any person, being the highest bidder at public sale for a tract of land, fails to make payment therefor on the day on which the same was purchased, the tract shall be again offered at public sale on the next day of sale, and such person shall not be capable of becoming the purchaser of that or any other tract offered at such public sales.

24 April, 1820, c. 51, s. 2, v. 3, p. 566.—*Chotard vs. Pope*, 12 Wh., 589; *U. S. vs. Boyd*, 5 How., 49; *Bell vs. Hearne*, 19 How., 260.

SEC. 2357. The price at which the public lands are offered for sale shall be one dollar and twenty-five cents an acre; and at every public sale, the highest bidder, who makes payment as provided in the preceding section, shall be the purchaser; but no land shall be sold, either at public or private sale, for a less price than one dollar and twenty-five cents an acre; and all the public lands which are hereafter offered at public sale, according to law, and remain unsold at the close of such public sales, shall be subject to be sold at private sale, by entry at the land office, at one dollar and twenty-five cents an acre, to be paid at the time of making such entry: *Provided*, That the price to be paid for alternate reserved lands, along the line of railroads within the limits granted by any act of Congress, shall be two dollars and fifty cents per acre.

24 April, 1820, c. 51, s. 3, v. 3, p. 566.

SEC. 2358. Whenever the President is authorized to cause the public lands, in any land-district, to be offered for sale, he may offer for sale, at first, only a part of the lands contained in such district, and at any

subsequent time or times he may offer for sale in the same manner any other part, or the remainder of the lands contained in the same.

31 March, 1808, c. 40, s. 1, v. 2, p. 479.

SEC. 2359. The public lands which are exposed to public sale by order of the President shall be advertised for a period of not less than three nor more than six months prior to the day of sale, unless otherwise specially provided.

23 June, 1834, c. 102, v. 4, p. 702.

SEC. 2360. The public sales of lands shall, respectively, be kept open for two weeks, and no longer, unless otherwise specially provided by law.

24 April, 1820, c. 51, s. 5, v. 3, p. 567.

SEC. 2361. Where two or more persons have become purchasers of a section or fractional section, the register of the land-office of the district in which the lands lie, shall on application of the parties, and a surrender of the original certificate, issue separate certificates, of the same date with the original, to each of the purchasers, or their assignees, in conformity with the division agreed on by them; but in no case shall the fractions so purchased be divided by other than north and south, or east and west, lines; nor shall any certificate issue for less than eighty acres.

23 May, 1828, c. 71, s. 7, v. 4, p. 287.

SEC. 2362. The Secretary of the Interior is authorized, upon proof being made, to his satisfaction, that any tract of land has been erroneously sold by the United States, so that from any cause the sale cannot be confirmed, to repay to the purchaser, or to his legal representatives or assignees, the sum of money which was paid therefor, out of any money in the Treasury not otherwise appropriated.

12 Jan., 1825, c. 5, v. 4, p. 80. 28 Feb., 1859, c. 64, s. 1, v. 11, p. 387.

SEC. 2363. Where any tract of land has been erroneously sold, as described in the preceding section, and the money which was paid for the same has been invested in any stocks held in trust, or has been paid into the Treasury to the credit of any trust-fund, it is lawful, by the sale of such portion of the stocks as may be necessary for the purpose, or out of such trust-fund, to repay the purchase-money to the parties entitled thereto.

28 Feb., 1859, c. 64, s. 2, v. 11, p. 388.

SEC. 2364. Whenever any reservation of public lands is brought into market, the Commissioner of the General Land-Office shall fix a minimum price, not less than one dollar and twenty-five cents per acre, below which such lands shall not be disposed of.

2 July, 1864, c. 221, v. 13, p. 374.

SEC. 2365. Where two or more persons apply for the purchase, at private sale, of the same tract, at the same time, the register shall determine the preference, by forthwith offering the tract to the highest bidder.

24 April, 1820, c. 51, s. 6, v. 3, p. 567.

SEC. 2366. The gold coins of Great Britain and other foreign coins shall be received in all payments on account of public lands, at the value estimated annually by the Director of the Mint, and proclaimed by the Secretary of the Treasury, in accordance with the provisions of section thirty-five hundred and sixty-four, Title, "THE COINAGE."

3 March, 1823, c. 53, s. 1, v. 3, p. 779. 21 February, 1857, c. 56, s. 1, v. 11, p. 163. [See § 3474.]

SEC. 2367. Wherever lands in California subject to private entry have been or are hereafter withdrawn from market for any cause, such lands shall not thereafter be held subject to private entry until they have first been open for at least ninety days to homestead and pre-emption settlers, and again offered at public sale.

15 July, 1870, c. 292, s. 1, v. 16, p. 304.

SEC. 2368. The Secretary of the Interior is authorized to permit the purchase, with cash or military bounty-land warrants, of such lands as may have been located with claims arising under the seventh clause of the second article of the treaty of September thirty, eighteen hundred and fifty-four, at such price per acre as he deems equitable and proper, but not at a less price than one dollar and twenty-five cents per acre and the owners and holders of such claims in good faith are also permitted to complete their entries, and to perfect their titles under such claims upon compliance with the terms above mentioned; but it must be shown to the satisfaction of the Secretary of the Interior that such claims are held by innocent parties in good faith, and that the location made under such claims have been made in good faith and by innocent holders of the same.

8 June, 1872, c. 357, v. 17, p. 340.

SEC. 2369. In every case of a purchaser of public lands, at private sale, having entered at the land-office, a tract different from that he intended to purchase, and being desirous of having the error in his entry corrected, he shall make his application for that purpose to the register of the land-office; and if it appears from testimony satisfactory to the register and receiver, that an error in the entry has been made, and that the same was occasioned by original incorrect marks made by the surveyor, or by the obliteration or change of the original marks and numbers at corners of the tract of land; or that it has in any otherwise arisen from mistake or error of the surveyor, or officers of the land-office, the register and receiver shall report the case, with the testimony, and their opinion thereon, to the Secretary of the Interior, who is authorized to direct that the purchaser is at liberty to withdraw the entry so erroneously made, and that the moneys which have been paid shall be applied in the purchase of other lands in the same district, or credited in the payment for other lands which have been purchased at the same office.

3 March, 1819, c. 98, v. 3, p. 526.

SEC. 2370. The provisions of the preceding section are declared to extend to all cases where patents have issued or may hereafter issue; upon condition, however, that the party concerned surrenders his patent to the Commissioner of the General Land-Office, with a relinquishment of title thereon, executed in a form to be prescribed by the Secretary of the Interior.

24 May, 1828, c. 96, v. 4, p. 301.

SEC. 2371. The provisions of the two preceding sections are made applicable in all respects to errors in the location of land-warrants.

3 March, 1853, c. 147, s. 2, v. 10, p. 257.

SEC. 2372. In all cases of an entry hereafter made, of a tract of land not intended to be entered, by a mistake of the true numbers of the tract intended to be entered, where the tract, thus erroneously entered, does not, in quantity, exceed one-half section, and where the certificate of the original purchaser has not been assigned, or his right in any way transferred, the purchaser, or, in case of his death, the legal representatives, not being assignees or transferees, may, in any case coming within the provisions of this section, file his own affidavit, with such additional evidence as can be procured, showing the mistake of the numbers of the tract intended to be entered, and that every reasonable precaution and exertion had been used to avoid the error, with the register and receiver of the land-district within which such tract of land is situated, who shall transmit the evidence submitted to them in each case, together with their written opinion, both as to the existence of the mistake and the credibility of each person testifying thereto, to the Commissioner of the General Land-Office, who if he be entirely satisfied that the mistake has been made, and that every reasonable precaution and exertion had been made to avoid it, is authorized to change the entry, and transfer the payment from the tract erroneously entered, to that intended to be entered, if unsold; but, if sold to any other tract liable to entry; but the oath of the person interested shall in no case be deemed sufficient, in the absence of other corroborating testimony, to authorize any such change of entry; nor shall anything herein contained affect the right of third persons.

24 May, 1824, c. 138, s. 1, v. 4, p. 31.

SEC. 2373. Every person who, before or at the time of the public sale of any of the lands of the United States, bargains, contracts, or agrees, or attempts to bargain, contract, or agree with any other person, that the last-named person shall not bid upon or purchase the land so offered for sale, or any parcel thereof, or who by intimidation, combination, or unfair management, hinders, or prevents, or attempts to hinder or prevent, any person from bidding upon or purchasing any tract of land so offered for sale, shall be fined not more than one thousand dollars, or imprisoned not more than two years, or both.

31 March, 1830, c. 48, s. 4, v. 4, p. 392. *Fackler vs. Ford*, 24 How., 331.

SEC. 2374. If any person before, or at the time of the public sale of any of the lands of the United States, enters into any contract, bargain, agreement, or secret understanding with any other person, proposing to purchase such land, to pay or give to such purchasers for such land a sum of money or other article of property, over and above the price at which the land is bid off by such purchasers, every such contract, bargain, agreement, or secret understanding, and every bond, obligation, or writing of any kind whatsoever, founded upon or growing out of the same, shall be utterly null and void.

31 March, 1830, c. 48, s. 5, v. 4, p. 392. *Fackler vs. Ford*, 24 How., 331.

SEC. 2375. Every person being a party to such contract, bargain, agreement, or secret understanding, who pays to such purchaser any sum of money or other article of value, over and above the purchase-

money of such land, may sue for and recover such excess from such purchaser in any court having jurisdiction of the same.

31 March, 1830, c. 48, s. 5, v. 4, p. 392.

SEC. 2376. If the party aggrieved have no legal evidence of such contract, bargain, agreement, or secret understanding, or of the payment of the excess, he may, by bill in equity, compel such purchaser to make discovery thereof; and if in such case the complainant shall ask for relief, the court in which the bill is pending may proceed to final decree between the parties to the same; but every such suit either in law or equity shall be commenced within six years next after the sale of such land by the United States.

31 March, 1830, c. 48, s. 5, v. 4, p. 392.

SEC. 2377. In no case shall more than three sections of public lands be entered at private entry in any one township by scrip issued to any State under the act approved July two, eighteen hundred and sixty-two, for the establishment of an agricultural college therein.

27 July, 1868, c. 256, v. 15, p. 227.

SEC. 2378. There is granted, for purposes of internal improvement, to each new State hereafter admitted into the Union, upon such admission, so much public land as, including the quantity that was granted to such State before its admission and while under a territorial government, will make five hundred thousand acres.

4 Sept., 1841, c. 18, s. 8, v. 5, p. 455. *Foley vs. Harrison*, 15 How., 433.

SEC. 2379. The selections of lands, granted in the preceding section, shall be made within the limits of each state so admitted into the Union, in such manner as the legislatures thereof, respectively, may direct; and such lands shall be located in parcels conformably to sectional divisions and subdivisions of not less than three hundred and twenty acres in any one location, on any public land not reserved from sale by law of Congress or by proclamation of the President. The locations may be made at any time after the public lands in any such new State have been surveyed according to law.

4 Sept., 1841, c. 18, s. 8, v. 5, p. 455.

CHAPTER EIGHT.

RESERVATION AND SALE OF TOWN-SITES ON THE PUBLIC LANDS.

Sec.

2380. Town-sites to be reserved.

2381. Reservations to be surveyed into lots.

2382. Town or city sites in public lands.

2383. When towns established upon

Sec.

unsurveyed lands, extension limits, how adjusted.

2384. When transcript-maps of town are not filed in twelve months, proceedings by Secretary of Interior.

Sec.	Sec.
2385. Where size of lots or town-plats vary from general rule.	2390. Authorities of Salt Lake City, rights of, as to entry.
2386. Title to lots subject to mineral rights.	2391. Certain acts of trustees to be void.
2387. Entry of town authorities in trust for occupants.	2392. No title acquired to gold mines, &c., or to mining-claim, &c.
2388. Entry under preceding section, when to be made.	2393. Military or other reservations, &c.
2389. Entry in proportion to number of inhabitants.	2394. Inhabitants of towns on public lands, rights of, to enter.

SEC. 2380. The President is authorized to reserve from the public lands, whether surveyed or unsurveyed, town-sites on the shores of harbors, at the junction of rivers, important portages, or any natural or prospective centres of population.

3 March, 1863, c. 80, s. 1, v. 12, p. 754.

SEC. 2381. When, in the opinion of the President, the public interests require it, it shall be the duty of the Secretary of the Interior to cause any of such reservations, or part thereof, to be surveyed into urban or suburban lots of suitable size, and to fix by appraisement of disinterested persons their cash value, and to offer the same for sale at public outcry to the highest bidder, and thence afterward to be held subject to sale at private entry according to such regulations as the Secretary of the Interior may prescribe; but no lot shall be disposed of at public sale or private entry for less than the appraised value thereof. And all such sales shall be conducted by the register and receiver of the land-office in the district in which the reservations may be situated, in accordance with the instructions of the Commissioner of the General Land-Office.

3 March, 1863, c. 80, s. 2, v. 12, p. 754.

SEC. 2382. In any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it may be lawful for them to cause to be filed with the recorder for the county in which the same is situated, a plat thereof, for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; such map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land-Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith, and when the premises are within the limits of an organized land-district, a similar map and statement shall be filed with the register and receiver, and at any time after the filing of such map, statement, and testimony in the General Land-Office it may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to

a minimum of ten dollars for each lot ; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at such minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property. But any actual settler upon any one lot, as above provided, and upon any additional lot in which he may have substantial improvements shall be entitled to prove up and purchase the same as a pre-emption, at such minimum, at any time before the day fixed for the public sale.

1 July, 1864, c. 205, s. 2, v. 13, p. 343.

SEC. 2383. When such cities or towns are established upon unsurveyed lands, it may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale ; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases.

1 July, 1864, c. 205, s. 3, v. 13, p. 344.

SEC. 2384. If within twelve months from the establishment of a city or town on the public domain, the parties interested refuse or fail to file in the General Land-Office a transcript map, with the statement and testimony called for by the provisions of section twenty-three hundred and eighty-two, it may be lawful for the Secretary of the Interior to cause a survey and plat to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by such provisions, with this exception, that they shall each be at an increase of fifty per centum on the minimum of ten dollars per lot.

1 July, 1864, c. 205, s. 4, v. 13, p. 344.

SEC. 2345. In the case of any city or town, in which the lots may be variant as to size from the limitation fixed in section twenty-three hundred and eighty-two, and in which the lots and buildings, as municipal improvements, cover an area greater than six hundred and forty acres, such variance as to size of lots or excess in area shall prove no bar to such city or town claim under the provisions of that section ; but the minimum price of each lot in such city or town, which may contain a greater number of square feet than the maximum named in that section, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish.

3 March, 1865, c. 107, s. 2, v. 13, p. 530.

SEC. 2386. Where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town-lots to be acquired shall be subject to such recognized possession and the necessary use thereof ; but nothing contained in this section shall be so construed as to recognize any color of title in possessors for mining purposes as against the United States.

3 March, 1865, c. 107, s. 2, v. 13, p. 530.

SEC. 2387. Whenever any portion of the public lands have been or may be settled upon and occupied as a town-site, not subject to entry under the agricultural pre-emption laws, it is lawful, in case such town be incorporated, for the corporate authorities thereof, and, if not incor-

porated, for the judge of the county court for the county in which such town is situated, to enter at the proper land-office, and at the minimum price, the land so settled and occupied in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated.

2 March, 1867, c. 177, v. 14, p. 541.

SEC. 2388. The entry of the land provided for in the preceding section shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a town-site shall be filed with the register of the proper land-office, prior to the commencement of the public sale of the body of land in which it is included, and the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States; but in any Territory in which a land-office may not have been established, such declaratory statements may be filed with the surveyor-general of the surveying-district in which the lands are situated; who shall transmit the same to the General Land-Office.

2 March, 1867, c. 177, v. 14, p. 541.

SEC. 2389. If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands authorized by law; and where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres; but for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed.

2 March, 1867, c. 177, v. 14, p. 541.

SEC. 2390. The words "not exceeding five thousand in all," in the preceding section, shall not apply to Salt Lake City, in the Territory of Utah; but such section shall be so construed in its application to that city that lands may be entered for the full number of inhabitants contained therein, not exceeding fifteen thousand; and as that city covers school-section number thirty-six, in township number one north, of range number one west, the same may be embraced in such entry, and indemnity shall be given therefor when a grant is made by Congress of sections sixteen and thirty-six, in the Territory of Utah, for school purposes.

1 July, 1870, c. 193, v. 16, p. 183.

SEC. 2391. Any act of the trustees not made in conformity to the regulations alluded to in section twenty-three hundred and eighty-seven shall be void.

2 March, 1867, c. 177, v. 14, p. 541.

SEC. 2392. No title shall be acquired, under the foregoing provisions

of this chapter, to any mine of gold, silver, cinnabar, or copper; or to any valid mining-claim or possession held under existing laws.

2 March, 1867, c. 177, v. 14, p. 541. 8 June, 1868, c. 53, v. 15, p. 67.

SEC. 2393. The provisions of this chapter shall not apply to military or other reservations heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the Land-Office by title derived from the Crown of Spain, or otherwise.

2 March 1867, c. 177, v. 14, p. 541.

SEC. 2394. The inhabitants of any town located on the public lands may avail themselves, if the town authorities choose to do so, of the provisions of sections twenty-three hundred and eighty-seven, twenty-three hundred and eighty-eight, and twenty-three hundred and eighty-nine; and in addition to the minimum price of the lands embracing any town-site so entered, there shall be paid by the parties availing themselves of such provisions all cost of surveying and platting any such town-site, and expenses incident thereto incurred by the United States, before any patent issues therefor; but nothing contained in the sections herein cited shall prevent the issuance of patents to persons who have made or may hereafter make entries, and elect to proceed under other laws relative to town-sites in this chapter set forth.

8 June, 1868, c. 53, v. 15, p. 67.

CHAPTER NINE.

SURVEY OF THE PUBLIC LANDS.

Sec.	Sec.
2395. Rules of survey.	2405. Ibid. for California and Washington.
2396. Boundaries and contents of public lands, how ascertained.	2406. Geological surveys, extension of public surveys, expenses of subdividing.
2397. Lines of division of half quarter-sections, how run.	2407. Surveys on rivers in certain cases.
2398. Contracts for surveys of public lands, when binding.	2408. Lines of surveys in Nevada.
2399. What instructions to be deemed part of contract.	2409. Geodetic method of survey in Oregon and California.
2400. Prices of surveys, how established.	2410. Rectangular mode of survey, when may be departed from.
2401. When survey may be had by settlers in township.	2411. Compensation for surveying by the day in Oregon and California.
2402. Deposit for expenses of surveys deemed an appropriation, &c.	2412. Penalty for interrupting surveys.
2403. Deposits made by settlers for public surveys to go in part payment of lands.	2413. Protection of surveyor by marshal of district.
2404. Augmented rates for surveys of lands covered with forests, &c., in Oregon.	

SEC. 2395. The public lands shall be divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of an Indian reservation, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers, may render this impracticable; and in that case this rule must be departed from no further than such particular circumstances require.

18 May, 1796, c. 29, s. 2, v. 1, p. 465. 10 May, 1800, c. 55, s. 3, v. 2, p. 73.

Second. The corners of the townships must be marked with progressive numbers from the beginning; each distance of a mile between such corners must be also distinctly marked with marks different from those of the corners.

Third. The township shall be subdivided into sections, containing, as nearly as may be, six hundred and forty acres each, by running through the same, each way, parallel lines at the end of every two miles; and by marking a corner on each of such lines, at the end of every mile. The sections shall be numbered respectively, beginning with the number one in the northeast section and proceeding west and east alternately through the township with progressive numbers till the thirty-six be completed.

Fourth. The deputy surveyors, respectively, shall cause to be marked on a tree near each corner established in the manner described, and within the section, the number of such section, and over it the number of the township within which such section may be; and the deputy surveyors shall carefully note, in their respective field-books, the names of the corner-trees marked and the numbers so made.

Fifth. Where the exterior lines of the townships which may be subdivided into sections or half-sections exceed, or do not extend six miles, the excess or deficiency shall be specially noted, and added to or deducted from the western and northern ranges of sections or half-sections in such township, according as the error may be in running the lines from east to west, or from north to south; the sections and half-sections bounded on the northern and western lines of such townships shall be sold as containing only the quantity expressed in the returns and plats respectively, and all others as containing the complete legal quantity.

Sixth. All lines shall be plainly marked upon trees, and measured with chains, containing two perches of sixteen and one-half feet each, subdivided into twenty-five equal links; and the chain shall be adjusted to a standard to be kept for that purpose.

Seventh. Every surveyor shall note in his field-book the true situations of all mines, salt licks, salt springs, and mill-seats which come to his knowledge; all water-courses over which the line he runs may pass; and also the quality of the lands.

Eighth. These field-books shall be returned to the surveyor-general, who shall cause therefrom a description of the whole lands surveyed to be made out and transmitted to the officers who may superintend the sales. He shall also cause a fair plat to be made of the townships and fractional parts of townships contained in the lands, describing the subdivisions thereof, and the marks of the corners. This plat shall be recorded in books to be kept for that purpose; and a copy thereof shall be kept open at the surveyor-general's office for public information, and other copies shall be sent to the places of the sale, and to the General Land-Office.

SEC. 2396. The boundaries and contents of the several sections, half-sections, and quarter-sections of the public lands shall be ascertained in conformity with the following principles:

First. All the corners marked in the surveys, returned by the surveyor-general, shall be established as the proper corners of sections, or subdivisions of sections, which they were intended to designate; and the corners of half and quarter sections, not marked on the surveys, shall be placed as nearly as possible equidistant from those two corners which stand on the same line.

Second. The boundary-lines, actually run and marked in the surveys returned by the surveyor-general, shall be established as the proper boundary-lines of the sections, or subdivisions, for which they were intended, and the length of such lines, as returned, shall be held and considered as the true length thereof. And the boundary-lines which have not been actually run and marked shall be ascertained, by running straight lines from the established corners to the opposite corresponding corners; but in those portions of the fractional townships where no such opposite corresponding corners have been or can be fixed, the boundary-lines shall be ascertained by running from the established corners due north and south or east and west lines, as the case may be, to the water-course, Indian boundary-line, or other external boundary of such fractional township.

Third. Each section or subdivision of section, the contents whereof have been returned by the surveyor-general, shall be held and considered as containing the exact quantity expressed in such return; and the half-sections and quarter-sections, the contents whereof shall not have been thus returned, shall be held and considered as containing the one half or the one-fourth part, respectively, of the returned contents of the section of which they may make part.

11 Feb., 1805, c. 14, s. 2, v. 2, p. 313. *Bates vs. Illinois Central R. R.*, 1 Bl., 208; *Railroad Comm'rs vs. Schurmeir*, 7 Wall., 272.

SEC. 2397. In every case of the division of a quarter-section the line for the division thereof shall run north and south, and the corners and contents of half quarter-sections which may thereafter be sold, shall be ascertained in the manner and on the principles directed and prescribed by the section preceding, and fractional sections containing one hundred and sixty acres or upwards shall in like manner as nearly as practicable be subdivided into half quarter-sections, under such rules and regulations as may be prescribed by the Secretary of the Interior, and in every case of a division of a half quarter-section, the line for the division thereof shall run east and west, and the corners and contents of quarter quarter-sections, which may thereafter be sold, shall be ascertained as nearly as may be, in the manner, and on the principles, directed and prescribed by the section preceding; and fractional sections containing fewer or more than one hundred and sixty acres shall in like manner, as nearly as may be practicable, be subdivided into quarter quarter-sections, under such rules and regulations as may be prescribed by the Secretary of the Interior.

5 April, 1832, c. 65, v. 4, p. 503. 24 April, 1820, c. 51, s. 1, v. 3, p. 566.

SEC. 2398. Contracts for the survey of the public lands shall not become binding upon the United States until approved by the Commis-

sioner of the General Land-Office, except in such cases as the Commissioner may otherwise specially order.

30 May, 1862, c. 86, s. 1, v. 12, p. 409. *Maguire vs. Tyler*, 1 Bl., 201.

SEC. 2399. The printed manual of instructions relating to the public surveys prepared at the General Land-Office, and bearing date February twenty-second, eighteen hundred and fifty-five, the instructions of the Commissioner of the General Land-Office, and the special instructions of the surveyor-general, when not in conflict with such printed manual, or the instructions of the Commissioner, shall be taken and deemed to be a part of every contract for surveying the public lands.

30 May, 1862, c. 86, s. 2, v. 12, p. 409.

SEC. 2400. The Commissioner of the General Land-Office has power, and it shall be his duty, to fix the prices per mile for public surveys, which shall in no case exceed the maximum established by law; and, under instructions to be prepared by the Commissioner, an accurate account shall be kept by each surveyor-general of the cost of surveying and platting private land-claims, to be reported to the General Land-Office, with the map of such claim, and patents shall not issue for any such private claim until the cost of survey and platting has been paid into the Treasury by the claimant.

30 May, 1862, c. 86, s. 3, v. 12, p. 409.

SEC. 2401. When the settlers in any township, not mineral or reserved by Government, desire a survey made of the same, under the authority of the surveyor-general, and file an application therefor in writing, and deposit in a proper United States depository, to the credit of the United States, a sum sufficient to pay for such survey, together with all expenses incident thereto, without cost or claim for indemnity on the United States, it may be lawful for the surveyor-general, under such instructions as may be given him by the Commissioner of the General Land-Office, and in accordance with law, to survey such township and make return thereof to the general and proper local land-office, provided the township so proposed to be surveyed is within the range of the regular progress of the public surveys embraced by existing standard lines or bases for the township and subdivisional surveys.

30 May, 1862, c. 86, s. 10, v. 12, p. 410.

SEC. 2402. The deposit of money in a proper United States depository, under the provisions of the preceding section, shall be deemed an appropriation of the sums so deposited for the objects contemplated by that section, and the Secretary of the Treasury is authorized to cause the sums so deposited to be placed to the credit of the proper appropriations for the surveying-service; but any excesses in such sums over and above the actual cost of the surveys, comprising all expenses incident thereto, for which they were severally deposited, shall be repaid to the depositors respectively.

1 July, 1864, Res. No. 60, v. 13, p. 414.

SEC. 2403. Where settlers make deposits in accordance with the provisions of section twenty-four hundred and seven, the amount so deposited shall go in part payment for their lands situated in the townships, the surveying of which is paid for out of such deposits.

3 March, 1871, c. 127, v. 16, p. 581.

SEC. 2404. The Commissioner of the General Land-Office may authorize, in his discretion, public lands in Oregon, densely covered with forests or thick undergrowth, to be surveyed at augmented rates, not exceeding eighteen dollars per mile for standard parallels, fifteen dollars for township, and twelve dollars for section lines.

15 July, 1870, c. 292, s. 1, v. 16, pp. 304, 305.

SEC. 2405. The Commissioner of the General Land-Office, in his discretion, may hereafter authorize public lands in California and in Washington Territory, densely covered with forest or thick undergrowth, to be surveyed at augmented rates, not exceeding eighteen dollars per linear mile for standard parallels, sixteen dollars for township, and fourteen dollars for section lines.

10 June, 1872, c. 415, s. 1, v. 17, p. 358.

SEC. 2406. There shall be no further geological survey by the Government, unless hereafter authorized by law. The public surveys shall extend over all mineral lands; and all subdividing of surveyed lands into lots less than one hundred and sixty acres may be done by county and local surveyors at the expense of claimants; but nothing in this section contained shall require the survey of waste or useless lands.

21 July, 1852, c. 66, s. 1, v. 10, pp. 15, 21. 9 July, 1870, c. 235, s. 16, v. 16, p. 218.

SEC. 2407. Whenever, in the opinion of the President, a departure from the ordinary method of surveying land on any river, lake, bayou, or water-course would promote the public interest, he may direct the surveyor-general in whose district such land is situated, and where the change is intended to be made, to cause the lands thus situated to be surveyed in tracts of two acres in width, fronting on any river, bayou, lake, or water-course, and running back the depth of forty acres; which tracts of land so surveyed shall be offered for sale entire, instead of in half quarter sections, and in the usual manner and on the same terms in all respects as the other public lands of the United States.

24 May, 1824, c. 141, v. 4, p. 34.

SEC. 2408. In extending the surveys of the public lands in the State of Nevada, the Secretary of the Interior may vary the lines of the subdivisions from a rectangular form, to suit the circumstances of the country.

4 July, 1866, c. 166, s. 5, v. 14, p. 86.

SEC. 2409. The Secretary of the Interior, if he deems it advisable, is authorized to continue the surveys in Oregon and California, to be made after what is known as the geodetic method, under such regulations and upon such terms as have been or may hereafter be prescribed by the Commissioner of the General Land-Office; but none other than township-lines shall be run where the land is unfit for cultivation; nor shall any deputy surveyor charge for any line except such as may be actually run and marked, or for any line not necessary to be run.

27 Sept., 1850, c. 76, s. 3, v. 9, p. 496. 3 March, 1853, c. 145, s. 4, v. 10, p. 245.

SEC. 2410. Whenever, in the opinion of the Secretary of the Interior, a departure from the rectangular mode of surveying and subdividing the public lands in California would promote the public interests, he

may direct such change to be made in the mode of surveying and designating such lands as he deems proper, with reference to the existence of mountains, mineral deposits, and the advantages derived from timber and water privileges; but such lands shall not be surveyed into less than one hundred and sixty acres, or subdivided into less than forty acres.

3 March, 1853, c. 145, s. 4, v. 10, p. 245.

SEC. 2411. Whenever the public surveys, or any portion of them, in the States of Oregon and California, are so required to be made as to render it expedient to make compensation for the surveying thereof by the day instead of by the mile, it shall be lawful for the Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, to make such fair and reasonable allowance as, in his judgment, may be necessary to insure the accurate and faithful execution of the work.

3 March, 1853, c. 145, s. 8, v. 10, p. 247.

SEC. 2412. Every person who in any manner, by threats or force, interrupts, hinders, or prevents the surveying of the public lands, or of any private land-claim which has been or may be confirmed by the United States, by the persons authorized to survey the same, in conformity with the instructions of the Commissioner of the General Land-Office, shall be fined not less than fifty dollars nor more than three thousand dollars, and be imprisoned not less than one nor more than three years.

29 May, 1830, c. 163, s. 1, v. 4, p. 417.

SEC. 2413. Whenever the President is satisfied that forcible opposition has been offered, or is likely to be offered, to any surveyor or deputy surveyor in the discharge of his duties in surveying the public lands, it may be lawful for the President to order the marshal of the State or district, by himself or deputy, to attend such surveyor or deputy surveyor with sufficient force to protect such officer in the execution of his duty, and to remove force should any be offered.

29 May, 1830, c. 163, s. 2, v. 4, p. 417.

CHAPTER TEN.

BOUNTY-LANDS.

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2414. Military bounty-land warrants and locations assignable.
2415. Warrants located at \$1.25; excess paid in cash.
2416. Claims for bounty-lands in virtue of certain acts named, &c.

Sec.
2417. Same subject.
2418. Bounty-lands for soldiers in certain wars.
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Sec.	Sec.
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2435. Former evidence of right to a	

SEC. 2414. All warrants for military bounty-lands which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are declared to be assignable by deed or instrument of writing, made and executed according to such form and pursuant to such regulations as may be prescribed by the Commissioner of the General Land-Office, so as to vest the assignee with all the rights of the original owner of the warrant or location.

22 March, 1852, c. 19, s. 1, v. 10, p. 3. 3 June, 1858, c. 84, s. 2, v. 11, p. 309.

SEC. 2415. The warrants which have been or may hereafter be issued in pursuance of law may be located according to the legal subdivisions of the public lands in one body upon any lands of the United States, subject to private entry at the time of such location at the minimum price. When such warrant is located on lands which are subject to entry at a greater minimum than one dollar and twenty-five cents per acre, the locator shall pay to the United States in cash the difference between the value of such warrants at one dollar and twenty-five cents per acre and the tract of land located on. But where such tract is rated at one dollar and twenty-five cents per acre, and does not exceed the area specified in the warrant, it must be taken in full satisfaction thereof.

22 March, 1852, c. 19, s. 1, v. 10, p. 3.

SEC. 2416. In all cases of warrants for bounty-lands, issued by virtue of an act approved July twenty-seven, one thousand eight hundred and forty-two, and of two acts approved January twenty-seven, one thousand eight hundred and thirty-five, therein and thereby revised, and of two

acts to the same intent respectively, approved June twenty-six, eighteen hundred and forty-eight, and February eight, eighteen hundred and fifty-four, for military services in the revolutionary war, or in the war of eighteen hundred and twelve with Great Britain, which remained unsatisfied on the second day of July, eighteen hundred and sixty-four, it is lawful for the person in whose name such warrant issued, his heirs or legal representatives, to enter in quarter-sections, at the proper local land-office in any of the States or Territories, the quantity of the public lands subject to private entry which he is entitled to under such warrant.

2 July, 1864, c. 226, s. 1, v. 13, p. 378.

SEC. 2417. All warrants for bounty-lands referred to in the preceding section may be located at any time, in conformity with the general laws in force at the time of such location.

2 July, 1864, c. 226, s. 2, v. 13, p. 379.

SEC. 2418. Each of the surviving, or the widow or minor children of deceased commissioned and non-commissioned officers, musicians, or privates, whether of regulars, volunteers, rangers, or militia, who performed military service in any regiment, company, or detachment, in the service of the United States, in the war with Great Britain, declared on the eighteenth day of June, eighteen hundred and twelve, or in any of the Indian wars since seventeen hundred and ninety, and prior to the third of March, eighteen hundred and fifty, and each of the commissioned officers who was engaged in the military service of the United States in the war with Mexico, shall be entitled to lands as follows: Those who engaged to serve twelve months or during the war, and actually served nine months, shall receive one hundred and sixty acres, and those who engaged to serve six months, and actually served four months, shall receive eighty acres, and those who engaged to serve for any or an indefinite period, and actually served one month, shall receive forty acres; but wherever any officer or soldier was honorably discharged in consequence of disability contracted in the service, before the expiration of his period of service, he shall receive the amount to which he would have been entitled if he had served the full period for which he had engaged to serve. All the persons enumerated in this section who enlisted in the regular army, or who were mustered in any volunteer company for a period of not less than twelve months, and who served in the war with Mexico, and received an honorable discharge, or who were killed or died of wounds received or sickness incurred in the course of such service, or were discharged before the expiration of the term of service in consequence of wounds received or sickness incurred in the course of such service, shall be entitled to receive a certificate or warrant for one hundred and sixty acres of land: or at option Treasury scrip for one hundred dollars bearing interest at six per cent. per annum, payable semi-annually, at the pleasure of the Government. In the event of the death of any one of the persons mentioned in this section during service, or after his discharge, and before the issuing of a certificate or warrant, the warrant or scrip shall be issued in favor of his family or relatives; first, to the widow and his children; second, his father; third, his mother; fourth, his brothers and sisters.

28 Sept., 1850, c. 85, s. 1, v. 9, p. 520. 11 Feb., 1847, c. 8, s. 9, v. 9, pp. 125, 126.

SEC. 2419. The persons enumerated in the preceding section received into service after the commencement of the war with Mexico, for less than twelve months, and who served such term, or were honorably discharged are entitled to receive a certificate or warrant for forty acres, or scrip for twenty-five dollars if preferred, and in the event of the death of such person during service, or after honorable discharge before the eleventh of February, eighteen hundred and forty-seven, the warrant or scrip shall issue to the wife, child, or children, if there be any, and if none, to the father, and if no father, to the mother of such soldier.

SEC. 2420. Where the militia, or volunteers, or State troops of any State or Territory, subsequent to the eighteenth day of June, eighteen hundred and twelve, and prior to March twenty-second, eighteen hundred and fifty-two, were called into service, the officers and soldiers thereof shall be entitled to all the benefits of section two thousand four hundred and eighteen upon proof of length of service as therein required.

22 March, 1852, c. 19, s. 4, v. 10, p. 4.

SEC. 2421. No person shall take any benefit under the provisions of the three preceding sections, if he has received, or is entitled to receive, any military land-bounty under any act of Congress passed prior to the twenty-second March, eighteen hundred and fifty-two.

28 Sep., 1850, c. 85, s. 1, v. 9, p. 520.

SEC. 2422. The period during which any officer or soldier remained in captivity with the enemy shall be estimated and added to the period of his actual service, and the person so retained in captivity shall receive land under the provisions of sections twenty-four hundred and eighteen and twenty-four hundred and twenty, in the same manner that he would be entitled in case he had entered the service for the whole term made up by the addition of the time of his captivity, and had served during such term.

28 Sep., 1850, c. 85, s. 2, v. 9, p. 520.

SEC. 2423. Every person for whom provision is made by sections twenty-four hundred and eighteen and twenty-four hundred and twenty, shall receive a warrant from the Department of the Interior for the quantity of land to which he is entitled; and, upon the return of such warrant, with evidence of the location thereof having been legally made to the General Land-Office, a patent shall be issued therefor.

28 Sep., 1850, c. 85, s. 3, v. 9, p. 520.

SEC. 2424. In the event of the death of any person, for whom provision is made by sections twenty-four hundred and eighteen and twenty-four hundred and twenty, and who did not receive bounty-land for his services, a like warrant shall issue in favor of his widow, who shall be entitled to one hundred and sixty acres of land in case her husband was killed in battle; nor shall a subsequent marriage impair the right of any widow to such warrant, if she be a widow at the time of making her application.

28 Sept., 1850, c. 85, s. 3, v. 9, p. 520.

SEC. 2425. Each of the surviving persons specified in the classes enumerated in the following section, who has served for a period of not

less than fourteen days, in any of the wars in which the United States have been engaged since the year seventeen hundred and ninety, and prior to the third day of March, eighteen hundred and fifty-five, shall be entitled to receive a warrant from the Department of the Interior, for one hundred and sixty acres of land; and, where any person so entitled has, prior to the third day of March, eighteen hundred and fifty-five, received a warrant for any number of acres less than one hundred and sixty, he shall be allowed a warrant for such quantity of land only as will make, in the whole, with what he may have received prior to that date, one hundred and sixty acres.

3 March, 1855, c. 207, ss. 1, 3, v. 10, pp. 701, 702.

SEC. 2426. The classes of persons embraced as beneficiaries under the preceding section, are as follows, namely:

First. Commissioned and non commissioned officers, musicians, and privates, whether of the regulars, volunteers, rangers, or militia, who were regularly mustered into the service of the United States.

Second. Commissioned and non-commissioned officers, seaman, ordinary seamen, flotilla-men, marines, clerks, and landsmen in the Navy.

Third. Militia, volunteers and State troops of any State or Territory, called into military service, and regularly mustered therein, and whose vices have been paid by the United States.

Fourth. Wagon-masters and teamsters who have been employed under the direction of competent authority, in time of war, in the transportation of military stores and supplies.

Fifth. Officers and soldiers of the revolutionary war, and marines, seamen and other persons in the naval service of the United States during that war.

Sixth. Chaplains who served with the Army.

Seventh. Volunteers who served with the armed forces of the United States in any of the wars mentioned, subject to military orders, whether regularly mustered into the service of the United States or not.

3 March, 1855, c. 207, ss. 1, 8, 10, v. 10, p. 701. 14 May, 1856, c. 26, ss. 4, 5, v. 11, pp. 8, 9.

SEC. 2427. The following class of persons are included as beneficiaries under section twenty-four hundred and twenty-five, without regard to the length of service rendered.

First. Any of the classes of persons mentioned in section twenty-four hundred and twenty-six who have been actually engaged in any battle in any of the wars in which this country has been engaged since seventeen hundred and ninety, and prior to March third, eighteen hundred and fifty-five.

Second. Those volunteers who served at the invasion of Plattsburgh, in September, eighteen hundred and fourteen.

Third. The volunteers who served at the battle of King's Mountain, in the revolutionary war.

Fourth. The volunteers who served at the battle of Nickojack against the confederate savages of the South.

Fifth. The volunteers who served in the attack on Lewistown, in Delaware, by the British fleet, in the war of eighteen hundred and twelve.

3 March, 1855, c. 207, ss. 3, 9, 11, v. 10, p. 702.

SEC. 2428. In the event of the death of any person who would be

entitled to a warrant, as provided in section twenty-four hundred and twenty-five, leaving a widow, or, if no widow, a minor child, such widow or such minor child shall receive a warrant for the same quantity of land that the decedent would be entitled to receive, if living on the third day of March, eighteen hundred and fifty-five.

3 March, 1855, c. 207, s. 2, v. 10, p. 702.

SEC. 2429. A subsequent marriage shall not impair the right of any widow, under the preceding section, if she be a widow at the time of her application.

3 March, 1855, c. 207, s. 2, v. 10, p. 702.

SEC. 2430. Persons within the age of twenty-one years on the third day of March, eighteen hundred and fifty-five, shall be considered minors within the intent of section twenty-four hundred and twenty-eight.

3 March, 1855, c. 207, s. 2, v. 10, p. 702.

2431. Where no record evidence of the service for which a warrant is claimed exists, parol evidence may be admitted to prove the service performed, under such regulations as the Commissioner of Pensions may prescribe.

3 March, 1855, c. 207, s. 3, v. 10, p. 702. 14 May, 1856, c. 26, s. 3, v. 11, p. 8.

SEC. 2432. Where certificate or a warrant for bounty-land for any less quantity than one hundred and sixty acres has been issued to any officer or soldier, or to the widow or minor child of any officer or soldier, the evidence upon which such certificate or warrant was issued shall be received to establish the service of such officer or soldier in the application of himself, or of his widow or minor child, for a warrant for so much land as may be required to make up the full sum of one hundred and sixty acres, to which he may be entitled under the preceding section, on proof of the identity of such officer or soldier, or, in case of his death, of the marriage and identity of his widow, or, in case of her death, of the identity of his minor child. But if, upon a review of such evidence, the Commissioner of Pensions is not satisfied that the former warrant was properly granted, he may require additional evidence, as well of the term as of the fact of service.

14 May, 1856, c. 26, s. 1, v. 11, p. 8.

SEC. 2433. When any company, battalion, or regiment, in an organized form, marched more than twenty miles to the place where they were mustered into the service of the United States, or were discharged more than twenty miles from the place where such company, battalion, or regiment was organized, in all such cases, in computing the length of service of the officers and soldiers of any such company, battalion, or regiment, there shall be allowed one day for every twenty miles from the place where the company, battalion, or regiment was organized to the place where the same was mustered into the service of the United States, and one day for every twenty miles from the place where such company, battalion, or regiment was discharged, to the place where it was organized, and from whence it marched to enter the service, provided that such march was in obedience to the command or direction of the President, or some general officer of the United States, commanding an army or department, or the chief executive officer of the State or

Territory by which such company, battalion, or regiment was called into service.

14 May, 1856, c. 26, s. 7, v. 11, p. 9. 22 March, 1852, c. 19, s. 5, v. 10, p. 4.

SEC. 2434. The provisions of all the bounty-land laws shall be extended to Indians, in the same manner and to the same extent as to white persons.

3 March, 1855, c. 207, s. 7, v. 10, p. 702.

SEC. 2435. Where a pension has been granted to any officer or soldier, the evidence upon which such pension was granted shall be received to establish the service of such officer or soldier in his application for bounty-land; and upon proof of his identity as such pensioner, a warrant may be issued to him for the quantity of land to which he is entitled; and in case of the death of such pensioned officer or soldier, his widow shall be entitled to a warrant for the same quantity of land to which her husband would have been entitled, if living, upon proof that she is such widow; and in case of the death of such officer or soldier, leaving a minor child and no widow, or where the widow may have deceased before the issuing of any warrant, such minor child shall be entitled to a warrant for the same quantity of land as the father would have been entitled to receive if living, upon proof of the decease of father and mother. But if, upon a review of such evidence, the Commissioner of Pensions is not satisfied that the pension was properly granted, he may require additional evidence, as well of the term as of the fact of service.

14 May, 1856, c. 26, s. 2, v. 11, p. 8.

SEC. 2436. All sales, mortgages, letters of attorney, or other instruments of writing, going to affect the title or claim to any warrant issued, or to be issued, or any land granted, or to be granted, under the preceding provisions of this chapter, made or executed prior to the issue of such warrant, shall be null and void to all intents and purposes whatsoever; nor shall such warrant, or the land obtained thereby, be in anywise affected by, or charged with, or subject to, the payment of any debt or claim incurred by any officer or soldier, prior to the issuing of the patent.

28 Sept., 1850, c. 85, s. 4, v. 9, p. 521.

SEC. 2437. It shall be the duty of the Commissioner of the General Land-Office, under such regulations as may be prescribed by the Secretary of the Interior, to cause to be located, free of expense, any warrant which the holder may transmit to the General Land-Office for that purpose, in such State or land-district as the holder or warrantee may designate, and upon good farming-land, so far as the same can be ascertained from the maps, plats, and field-notes of the surveyor, or from any other information in the possession of the local office, and, upon the location being made, the Secretary shall cause a patent to be transmitted to such warrantee or holder.

28 Sept., 1850, c. 85, s. 4, v. 9, p. 521.

SEC. 2438. No person who has been in the military service of the United States shall, in any case, receive a bounty-land warrant if it

appears by the muster-rolls of his regiment or corps that he deserted or was dishonorably discharged from service.

28 Sept., 1850, c. 85, s. 1, v. 9, p. 520. 3 March, 1855, c. 207, s. 1, v. 10, p. 701.

SEC. 2439. When a soldier of the Regular Army, who has obtained a military land-warrant, loses the same, or such warrant is destroyed by accident, he shall, upon proof thereof to the satisfaction of the Secretary of the Interior, be entitled to a patent in like manner as if the warrant was produced.

27 April, 1816, c. 127, s. 1, v. 3, p. 317.

SEC. 2440. In all cases of discharge from the military service of the United States of any soldier of the Regular Army, when it appears to the satisfaction of the Secretary of War that a certificate of faithful services has been omitted by the neglect of the discharging officer, by misconstruction of the law, or by any other neglect or casualty, such omission shall not prevent the issuing of the warrant and patent as in other cases. And when it is proved that any soldier of the Regular Army has lost his discharge and certificate of faithful service, the Secretary of War shall cause such papers to be furnished such soldier as will entitle him to his land-warrant and patent, provided such measure is justified by the time of his enlistment, the period of service, and the report of some officer of the corps to which he was attached.

27 April, 1816, c. 127, s. 2, v. 3, p. 317.

SEC. 2441. Whenever it appears that any certificate or warrant, issued in pursuance of any law granting bounty-land, has been lost or destroyed, whether the same has been sold and assigned by the warrantee or not, the Secretary of the Interior is required to cause a new certificate or warrant of like tenor to be issued in lieu thereof; which new certificate or warrant may be assigned, located, and patented in like manner as other certificates or warrants for bounty-land are now authorized by law to be assigned, located, and patented; and in all cases where warrants have been, or may be, re-issued, the original warrant, in whose hands it may be, shall be deemed and held to be null and void, and the assignment thereof, if any there be, fraudulent; and no patent shall ever issue for any land located therewith, unless such presumption of fraud in the assignment be removed by due proof that the same was executed by the warrantee in good faith and for a valuable consideration.

23 June, 1860, c. 203, s. 1, v. 12, p. 90.

SEC. 2442. The Secretary of the Interior is required to prescribe such regulations for carrying the preceding section into effect as he may deem necessary and proper in order to protect the Government against imposition and fraud by persons claiming the benefit thereof; and all laws and parts of laws for the punishment of frauds against the United States are made applicable to frauds under that section.

23 June, 1860, c. 203, s. 2, v. 12, p. 91.

SEC. 2443. In all cases where an officer or soldier of the revolutionary war, or a soldier of the war of eighteen hundred and twelve, was entitled to bounty-land, has died before obtaining a patent for the land, and where application is made by a part only of the heirs of such de-

ceased officer or soldier for such bounty-land, it shall be the duty of the Secretary of the Interior to issue the patent in the name of the heirs of such deceased officer or soldier, without specifying each; and the patent so issued in the name of the heirs, generally, shall inure to the benefit of the whole, in such portions as they are severally entitled to by the laws of descent in the State or Territory where the officer or soldier belonged at the time of his death.

3 Mar., 1843, Res. No. 7, v. 5, p. 650.

SEC. 2444. When proof has been or hereafter is filed in the Pension-Office, during the life-time of a claimant, establishing, to the satisfaction of that office, his right to a warrant for military services, and such warrant has not been, or may not be, issued until after the death of the claimant, and all such warrants as have been heretofore issued subsequent to the death of the claimant, the title to such warrants shall vest in his widow, if there be one, and if there be no widow, then in the heirs or legatees of the claimant; and all military bounty-land warrants issued pursuant to law shall be treated as personal chattels, and may be conveyed by assignment of such widow, heirs, or legatees, or by the legal representatives of the deceased claimant, for the use of such heirs or legatees only.

3 June, 1858, c. 84, s. 1, v. 11, p. 308.

SEC. 2445. The legal representatives of a deceased claimant for a bounty-land warrant, whose claim was filed prior to his death, may file the proofs necessary to perfect such claim.

3 March, 1869, c. 138, v. 15, p. 336.

SEC. 2446. Where an actual settler on the public lands has sought, or hereafter attempts, to locate the land settled on and improved by him, with a military bounty-land warrant, and where, from any cause, an error has occurred in making such location, he is authorized to relinquish the land so erroneously located, and to locate such warrant upon the land so settled upon and improved by him, if the same then be vacant, and if not, upon any other vacant land, on making proof of those facts to the satisfaction of the land-officers, according to such rules and regulations as may be prescribed by the Commissioner of the General Land-Office, and subject to his final adjudication.

3 March, 1853, c. 147, s. 1, v. 10, p. 256.

CHAPTER ELEVEN.

MISCELLANEOUS PROVISIONS RELATING TO THE
PUBLIC LANDS.

- | Sec. | Sec. |
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SEC. 2447. In case of any claim to land in any State or Territory which has heretofore been confirmed by law, and in which no provision is made by the confirmatory statute for the issue of a patent, it may be lawful, where surveys for the land have been or may hereafter be made, to issue patents for the claims so confirmed, upon the presentation to the Commissioner of the General Land-Office of plats of survey thereof, duly approved by the surveyor-general of any State or Territory, if the same be found correct by the Commissioner. But such patents shall only operate as a relinquishment of title on the part of the United States, and shall in no manner interfere with any valid adverse right to the same land; nor be construed to preclude a legal investigation and decision by the proper judicial tribunal between adverse claimants to the same land.

22 Dec., 1854, c. 10, v. 10, p. 599.

SEC. 2448. Where patents for public lands have been or may be issued, in pursuance of any law of the United States, to a person who had died, or who hereafter dies, before the date of such patent, the title to the land designated therein shall inure to and become vested in the heirs, devisees, or assignees of such deceased patentee as if the patent had issued to the deceased person during life.

20 May, 1836, c. 76, v. 5, p. 31.

SEC. 2449. Where lands have been or may hereafter be granted by any law of Congress to any one of the several States and Territories, and where such law does not convey the fee-simple title of the lands, or require patents to be issued therefor, the list of such lands which have been or may hereafter be certified by the Commissioner of the General Land-Office, under the seal of his office, either as originals or copies of the originals or records shall be regarded as conveying the fee-simple of all the lands embraced in such lists that are of the character contemplated by such act of Congress, and intended to be granted thereby; but where lands embraced in such lists are not of the character embraced by such acts of Congress, and are not intended to be granted thereby, the lists, so far as these lands are concerned, shall be perfectly null and void, and no right, title, claim, or interest shall be conveyed thereby.

3 Aug., 1854, c. 201, v. 10, p. 346.

SEC. 2450. The Commissioner of the General Land-Office is authorized to decide upon principles of equity and justice, as recognized in courts of equity, and in accordance with regulations to be settled by the Secretary of the Treasury, the Attorney-General, and the Commissioner, conjointly, consistently with such principles, all cases of sus-

pending entries of public lands and of suspended pre-emption land-claims, and to adjudge in what cases patents shall issue upon the same.

26 June, 1856, c. 47, v. 11, p. 22. 3 August, 1846, c. 78, s. 1, v. 9, p. 51. 3 March, 1853, c. 152, s. 1, v. 10, p. 258.

SEC. 2451. Every such adjudication shall be approved by the Secretary of the Treasury and the Attorney-General, acting as a board; and shall operate only to divest the United States of the title of the lands embraced thereby, without prejudice to the rights of conflicting claimants

3 Aug., 1846, c. 78, s. 1, v. 9, p. 51.

SEC. 2452. The Commissioner is directed to report to Congress at the first session after any such adjudications have been made a list of the same under the classes prescribed by law, with a statement of the principles upon which each class was determined.

3 Aug., 1846, c. 78, s. 2, v. 9, p. 51.

SEC. 2453. The Commissioner shall arrange his decisions into two classes; the first class to embrace all such cases of equity as may be finally confirmed by the board, and the second class to embrace all such cases as the board reject and decide to be invalid.

3 Aug., 1846, c. 78, s. 3, v. 9, p. 51.

SEC. 2454. For all lands covered by claims which are placed in the first class, patents shall issue to the claimants; and all lands embraced by claims placed in the second class shall ipso facto revert to, and become part of, the public domain.

3 Aug., 1846, c. 78, s. 4, v. 9, p. 51.

SEC. 2455. It may be lawful for the Commissioner of the General Land-Office to order into market, after due notice, without the formality and expense of a proclamation of the President, all lands of the second class, though heretofore unproclaimed and unoffered, and such other isolated or disconnected tracts or parcels of unoffered lands which, in his judgment, it would be proper to expose to sale in like manner. But public notice of at least thirty days shall be given by the land-officers of the district in which such lands may be situated, pursuant to the directions of the Commissioner.

3 Aug., 1846, c. 78, s. 5, v. 9, p. 51.

SEC. 2456. Where patents have been already issued on entries which are confirmed by the officers who are constituted the board of adjudication, the Commissioner of the General Land-Office, upon the canceling of the outstanding patent, is authorized to issue a new patent, on such confirmation, to the person who made the entry, his heirs or assigns.

3 March, 1853, c. 152, s. 2, v. 10, p. 258.

SEC. 2457. The preceding provisions from section twenty-four hundred and fifty to section twenty-four hundred and fifty-six, inclusive, shall be applicable to all cases of suspended entries and locations, which have arisen in the General Land-Office since the twenty-sixth day of June, eighteen hundred and fifty-six, as well as to all cases of a similar kind which may hereafter occur, embracing as well locations under bounty-land warrants as ordinary entries or sales, including homestead entries and pre-emption locations or cases; where the law has been substantially complied with, and the error or informality arose from igno-

rance, accident, or mistake which is satisfactorily explained; and where the rights of no other claimant or pre-emptor are prejudiced, or where there is no adverse claim.

26 June, 1856, c. 47, v. 11, p. 22.

SEC. 2458. The Secretary of the Navy is authorized, under the direction of the President, to cause such vacant and unappropriated lands of the United States as produce the live-oak and red-cedar timbers to be explored, and selection to be made of such tracts or portions thereof, where the principal growth is of either of such timbers, as in his judgment may be necessary to furnish for the Navy a sufficient supply of the same.

1 March, 1817, c. 22, s. 1, v. 3, p. 347. 15 May, 1820, c. 136, v. 3, p. 607. 3 March, 1827, c. 94, s. 3, v. 4, p. 242.

SEC. 2459. The President is authorized to appoint surveyors of public lands, who shall perform the duties prescribed in the preceding section, and report to him the tracts by them selected, with the boundaries ascertained and accurately designated by actual survey or water-courses; and the tracts of land thus selected with the approbation of the President shall be reserved, unless otherwise directed by law, from any future sale of the public lands, and be appropriated to the sole purpose of supplying timber for the Navy of the United States; but nothing in this section contained shall be construed to prejudice the prior rights of any person claiming lands, which may be reserved in the manner herein provided.

1 March, 1817, c. 22, s. 1, v. 3, p. 347.

SEC. 2460. The President is authorized to employ so much of the land and naval forces of the United States as may be necessary effectually to prevent the felling, cutting down, or other destruction of the timber of the United States in Florida, and to prevent the transportation or carrying away any such timber as may be already felled or cut down; and to take such other and further measures as may be deemed advisable for the preservation of the timber of the United States in Florida.

23 Feb., 1822, c. 9, v. 3, p. 651.

SEC. 2461. If any person shall cut, or cause or procure to be cut, or aid, assist, or be employed in cutting, or shall wantonly destroy, or cause or procure to be wantonly destroyed, or aid, assist, or be employed in wantonly destroying any live-oak or red-cedar trees, or other timber standing, growing, or being on any lands of the United States, which, in pursuance of any law passed, or hereafter to be passed, have been reserved or purchased for the use of the United States, for supplying or furnishing therefrom timber for the Navy of the United States; or if any person shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing from any such lands which have been reserved or purchased, any live-oak or red-cedar trees, or other timber, unless duly authorized so to do, by order, in writing, of a competent officer, and for the use of the Navy of the United States; or if any person shall cut, or cause or procure to be cut, or aid, or assist, or be employed in cutting any live-oak or red-cedar trees, or other timber on, or shall remove, or cause or procure to be removed, or aid, or assist, or be employed in removing any live-oak or red-cedar trees or other

timber, from any other lands of the United States, acquired, or hereafter to be acquired, with intent to export, dispose of, use, or employ the same in any manner whatsoever, other than for the use of the Navy of the United States; every such person shall pay a fine not less than triple the value of the trees or timber so cut, destroyed, or removed, and shall be imprisoned not exceeding twelve months. [See § 4751.]

2 March, 1831, c. 66, s. 1, v. 4, p. 472.

SEC. 2462. If the master, owner, or consignee of any vessel shall knowingly take on board any timber cut on lands which have been reserved or purchased as in the preceding section prescribed, without proper authority, and for the use of the Navy of the United States; or shall take on board any live-oak or red-cedar timber cut on any other lands of the United States, with intent to transport the same to any port or place within the United States, or to export the same to any foreign country, the vessel on board of which the same shall be taken, transported, or seized, shall, with her tackle, apparel, and furniture, be wholly forfeited to the United States, and the captain or master of such vessel wherein the same was exported to any foreign country against the provisions of this section shall forfeit and pay to the United States a sum not exceeding one thousand dollars. [See § 4751.]

2 March, 1831, c. 66, s. 2, v. 4, p. 472.

SEC. 2463. It shall be the duty of all collectors of the customs within the States of Alabama, Mississippi, Louisiana, and Florida, before allowing a clearance to any vessel laden in whole or in part with live-oak timber, to ascertain satisfactorily that such timber was cut from private lands, or, if from public ones, by consent of the Navy Department. And it is also made the duty of all officers of the customs, and of the land officers within those States, to cause prosecutions to be seasonably instituted against all persons known to be guilty of depredations on, or injuries to, the live-oak growing on the public lands. [See §§ 4205, 4751.]

2 March, 1833, c. 67, s. 3, v. 4, p. 647.

SEC. 2464. Every person who plants, protects, and keeps in a healthy growing condition for ten years forty acres of timber, the trees thereon not being more than twelve feet apart each way, on any quarter-section of any of the public lands, shall be entitled to a patent for the whole of such quarter-section at the expiration of the ten years, on making proof of such fact by not less than two credible witnesses: *Provided*, That only one quarter in any section shall be thus granted.

3 March, 1873, c. 277, s. 1, v. 17, pp. 605, 606.

SEC. 2465. Every person applying for the benefit of the preceding section shall, upon application to the register of the land-office in which he is about to make such entry, make affidavit before the register or receiver that such entry is made for the cultivation of timber, and upon filing his affidavit with the register and receiver, and on payment of ten dollars, he shall thereupon be permitted to enter the quantity of land specified.

3 March, 1873, c. 277, s. 2, v. 17, p. 606.

SEC. 2466. No certificate shall be given or patent issue therefor until the expiration of at least ten years from the date of such entry; and if at the expiration of such time, or at any time within three years there-

after, the person making such entry, or, if he be dead, his heirs or legal representatives, shall prove by two credible witnesses that he has planted and for not less than ten years has cultivated and protected such quantity and character of timber, he shall receive the patent for such quarter-section of land.

SEC. 2467. If at any time after the filing of such affidavit, and prior to the issuing of the patent for the land, it is proved, after due notice to the party making such entry and claiming to cultivate such timber, to the satisfaction of the register of the land-office, that such person has abandoned or failed to cultivate, protect, and keep in good condition such timber, then, and in that event, the land shall revert to the United States.

SEC. 2468. No land acquired under the provisions of the four preceding sections shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of a patent therefor.

SEC. 2469. The Commissioner of the General Land-Office shall cause to be prepared, and shall certify, under the seal of the office, such copies of records, books, and papers on file in his office, as may be applied for, to be used in evidence in courts of justice.

4 July, 1836, c. 352, s. 7, v. 5, p. 111.

SEC. 2470. Literal exemplifications of any records which have been or may be granted in virtue of the preceding section shall be deemed of the same validity in all proceedings, whether at law or in equity, wherein such exemplifications are adduced in evidence, as if the names of the officers signing and countersigning the same had been fully inserted in such record.

3 March, 1843, c. 95, s. 1, v. 5, p. 627.

SEC. 2471. Every person who falsely makes, alters, forges, or counterfeits, or causes or procures to be falsely made, altered, forged, or counterfeited; or willingly aids and assists in the false making, altering, forging, or counterfeiting any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or evidence of right, title, or claim to lands, mines, or minerals in California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, for the purpose of setting up or establishing against the United States any claim, right, or title to lands, mines, or minerals within the State of California, or for the purpose of enabling any person to set up or establish any such claim; and every person, who, for such purpose, utters or publishes as true and genuine any such false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, evidence of right, title, or claim to lands or mines or minerals in the State of California, or any instrument of writing whatever in relation to lands or mines or minerals in the State of California, shall be punishable by imprisonment at hard labor not less than three years and not more than ten years, and by a fine of not more than ten thousand dollars. [See §§ 5411, 5412.]

18 May, 1858, c. 40, s. 1, v. 11, p. 290.

SEC. 2472. Every person who makes, or causes or procures to be made, or willingly aids and assists in making any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent,

confirmation, diseño, map, expediente or part of an expediente, or any title-paper, or written evidence of right, title, or claim, under Mexican authority, to any lands, mines, or minerals in the State of California, or any instrument of writing in relation to lands or mines or minerals in the State of California, having a false date, or falsely purporting to be made by any Mexican officer or authority prior to the seventh day of July, eighteen hundred and forty-six, for the purpose of setting up or establishing any claim against the United States to lands or mines or minerals within the State of California, or of enabling any person to set up or establish any such claim; and every person who signs his name as governor, secretary, or other public officer acting under Mexican authority, to any instrument of writing falsely purporting to be a grant, concession, or denouncement under Mexican authority, and during its existence in California, of lands, mines, or minerals, or falsely purporting to be an informe, report, record, confirmation, or other proceeding on an application for a grant, concession, or denouncement under Mexican authority, during its existence in California, of lands, mines, or minerals, shall be punishable as prescribed in the preceding section.

18 May, 1858, c. 40, s. 2, v. 11, p. 291.

Sec. 2473. Every person who, for the purpose of setting up or establishing any claim against the United States to lands, mines, or minerals within the State of California, presents, or causes or procures to be presented, before any court, judge, commission, or commissioner, or other officer of the United States, any false, forged, altered, or counterfeited petition, certificate, order, report, decree, concession, denouncement, deed, patent, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, minerals or mines in the State of California, knowing the same to be false, forged, altered, or counterfeited, or any falsely dated petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim to lands, mines, or minerals in California, knowing the same to be falsely dated; and every person who prosecutes in any court of the United States, by appeal or otherwise, any claim against the United States for lands, mines, or minerals in California, which claim is founded upon, or evidenced by, any petition, certificate, order, report, decree, concession, denouncement, deed, patent, confirmation, diseño, map, expediente or part of an expediente, title-paper, or written evidence of right, title, or claim, which has been forged, altered, counterfeited, or falsely dated, knowing the same to be forged, altered, counterfeited, or falsely dated, shall be punishable as prescribed in section twenty-four hundred and seventy-one.

18 May, 1858, c. 40, s. 3, v. 11, p. 291.

Sec. 2474. The tract of land in the Territories of Montana and Wyoming, lying near the head-waters of the Yellowstone River, and described as follows, to wit, commencing at the junction of Gardiner's River with the Yellowstone River, and running east to the meridian passing ten miles to the eastward of the most eastern point of Yellowstone Lake; thence south along said meridian to the parallel of latitude passing ten miles south of the most southern point of Yellowstone Lake; thence west along said parallel to the meridian passing fifteen miles west of the most western point of Madison Lake; thence north along

said meridian to the latitude of the junction of the Yellowstone and Gardiner's Rivers; thence east to the place of beginning, is reserved and withdrawn from settlement, occupancy, or sale under the laws of the United States, and dedicated and set apart as a public park or pleasuring-ground for the benefit and enjoyment of the people; and all persons who locate, or settle upon, or occupy any part of the land thus set apart as a public park, except as provided in the following section, shall be considered trespassers and removed therefrom.

1 March, 1872, c. 24, s. 1, v. 17, p. 32.

SEC. 2475. Such public park shall be under the exclusive control of the Secretary of the Interior, whose duty it shall be, as soon as practicable, to make and publish such regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation, from injury or spoliation, of all timber, mineral deposits, natural curiosities, or wonders, within the park, and their retention in their natural condition. The Secretary may, in his discretion, grant leases for building purposes for terms not exceeding ten years, of small parcels of ground, at such places in the park as may require the erection of buildings for the accommodation of visitors; all of the proceeds of such leases, and all other revenues that may be derived from any source connected with the park, to be expended under his direction in the management of the same, and the construction of roads and bridle-paths therein. He shall provide against the wanton destruction of the fish and game found within the park, and against their capture or destruction for the purposes of merchandise or profit. He shall also cause all persons trespassing upon the same to be removed therefrom, and generally is authorized to take all such measures as may be necessary or proper to fully carry out the objects and purposes of this section.

SEC. 2476. All navigable rivers, within the territory occupied by the public lands, shall remain and be deemed public highways; and, in all cases where the opposite banks of any streams not navigable belong to different persons, the stream and the bed thereof shall become common to both.

18 May, 1796, c. 29, s. 9, v. 1, p. 468. 3 March, 1803, c. 27, s. 17, v. 2, p. 235.

SEC. 2477. The right of way for the construction of highways over public lands, not reserved for public uses, is hereby granted.

26 July, 1866, c. 262, s. 8, v. 14, p. 253.

SEC. 2478. The Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, is authorized to enforce and carry into execution, by appropriate regulations, every part of the provisions of this Title not otherwise specially provided for.

SEC. 2479. To enable the several States (but not including the States of Kansas, Nebraska, and Nevada) to construct the necessary levees and drains, to reclaim the swamp and overflowed lands therein—the whole of the swamp and overflowed lands, made unfit thereby for cultivation, and remaining unsold on or after the twenty-eighth day of September, A. D. eighteen hundred and fifty, are granted and belong to the several States respectively, in which said lands are situated: *Provided, however,* That said grant of swamp and overflowed lands, as to the State of California, Minnesota, and Oregon, is subject to the limi-

tations, restrictions and conditions hereinafter named and specified, as applicable to said three last-named States respectively.

28 Sep., 1850, c. 84, ss. 1, 4, v. 9, p. 520. 12 March, 1860, c. 5, s. 1, v. 12, p. 3.

SEC. 2480. It shall be the duty of the Secretary of the Interior, to make accurate lists and plats of all such lands, and transmit the same to the governors of the several States in which such lands may lie, and at the request of the governor of any State in which said swamp and overflowed lands may be, to cause patents to be issued to said State therefor, conveying to said State the fee-simple of said land.

The proceeds of said lands, whether from sale or by direct appropriation in kind, shall be applied exclusively, as far as necessary, to the reclaiming said lands, by means of levees and drains.

28 Sept., 1850, c. 84, s. 2, v. 9, p. 519.

SEC. 2481. In making out lists and plats of the lands aforesaid all legal subdivisions, the greater part whereof is wet and unfit for cultivation, shall be included in said lists and plats, but when the greater part of a subdivision is not of that character, the whole of it shall be excluded therefrom.

Ibid., s. 3, p. 519.

SEC. 2482. Upon proof by the authorized agent of the State, before the Commissioner of the General Land-Office, that any of the lands, purchased by any person from the United States, prior to March 2d, 1855, were "swamp lands," within the true intent and meaning of the act titled "An act to enable the State of Arkansas and other States to reclaim the swamp lands within their limits," approved September twenty-eight, eighteen hundred and fifty, the purchase-money shall be paid over to the State wherein said land is situate; and when the lands have been located by warrant or scrip, the said State shall be authorized to locate a like quantity of any of the public lands subject to entry, at one dollar and twenty-five cents per acre, or less, and patents shall issue therefor. The decision of the Commissioner of the General Land-Office shall be first approved by the Secretary of the Interior.

2 March, 1855, c. 147, s. 2, v. 10, pp. 634, 635.

SEC. 2483. The President of the United States shall cause patents to be issued to the purchaser or purchasers, locator or locators, who made entries of the public lands claimed as swamp lands, either with cash or land-warrants, or scrip, or under any homestead or pre-emption laws prior to the issue of patents to the State or States: *Provided*, That in all cases where any State through its constituted authorities, may have sold or disposed of any tract or tracts of land prior to the entry sale or location of the same under the pre-emption or other laws of the United States, no patent shall be issued by the President for such tract or tracts of land, until such State through its constituted authorities, shall release its claim thereto in such form as shall be prescribed by the Secretary of the Interior. In all cases where such State did not within ninety days from the second day of March, 1855, the date of an act entitled, "An act for the relief of purchasers and locators of swamp and overflowed lands" through its constituted authorities, return to the General Land-Office of the United States, a list of all the lands sold as aforesaid, together with the dates of such sales and the names of the

purchasers, the President shall issue patents to persons who made such entries of the public lands so claimed as swamp-land.

2 March, 1855, c. 147, s. 1, v. 10, p. 634.

SEC. 2484. All lands selected and reported to the General Land-Office as swamp and overflowed land by the several States entitled to the provisions of said act of Sep. 28, 1850, prior to March third, A. D., eighteen hundred and fifty-seven, are confirmed to said States respectively so far as the same remained vacant and unappropriated and not interfered with by an actual settlement under any law of the United States.

3 March, 1857, c. 117, v. 11, p. 251.

SEC. 2485. All selections of any portion of the public domain, to which no homestead, pre-emption or other right had been acquired by any settler under the laws of the United States, and not being mineral-land, nor reserved for naval, military or Indian purposes, nor held or claimed under any valid Mexican or Spanish grant, and not included within the limits of any city, town or village or of the county of San-Francisco, made prior to the twenty-third day of July, one thousand eight hundred and sixty-six, and theretofore sold to bona-fide purchasers by the State of California are confirmed to the State of California: *Provided, however,* That said State shall not receive any greater quantity of land for school or improvement purposes than she is entitled to by law.

23 July, 1866, c. 219, s. 1, v. 14, p. 218.

SEC. 2486. When selections named in the foregoing section have been made upon lands already surveyed by authority of the United States, the authorities of said States, where the same has not been already done, shall notify the register of the land-office, for the district in which the land is situated, which notice shall be regarded as the date of the State selection; and the said registers of the several land-officers, after investigation and decision, shall, under the instruction of the Commissioner of the General Land-Office, forward all such selections to the General Land Office, and the Commissioner of the General Land-Office shall certify the same over to the State in the usual manner.

Ibid., s. 2, p. 219.

SEC. 2487. When the State of California has made such selections from the lands not surveyed by the authority of the United States, but which selections have been surveyed by the authority of said State, and the land sold to purchasers in good faith, under the laws of the State, such selections, from said twenty-third of July, eighteen hundred and sixty-six, when marked off and designated in the field, shall have the same force and effect as the pre-emption rights of a settler upon unsurveyed public lands; and if upon a survey of such lands by the United States, the lines of the two surveys shall be found not to agree, the selection shall be so changed as to include those legal subdivisions which nearest conform to the identical land included in the State survey and selection. Upon filing with the register of the proper United States land-office of the township plat, in which any such selection of unsurveyed land is located, the holder of the State title shall be allowed the same time to present and prove up his purchase and claim as is allowed pre-emptors under existing laws—and if found in accordance with the

law the land embraced therein shall be certified over to the State by the Commissioner of the General Land-Office.

SEC. 2488. It shall be the duty of the Commissioner of the General Land-Office, to certify over to the State of California as swamp and overflowed lands, all the lands represented as such upon the approved township surveys and plats, whether made before or after the 23d day of July, 1866, under the authority of the United States.

The surveyor-general of the United States for California, shall under the direction of the Commissioner of the General Land-Office, examine the segregation maps and surveys of the swamp and overflowed lands, made by said State; and where he shall find them to conform to the system of surveys adopted by the United States, he shall construct and approve township plats accordingly, and forward to the General Land-Office for approval.

In segregating large bodies of land, notoriously and obviously swamp and overflowed, it shall not be necessary to subdivide the same, but to run the exterior lines of such body of land.

In case such State surveys are found not to be in accordance with the system of the United States surveys, and in such other townships as no survey has been made by the United States the Commissioner shall direct the surveyor-general, to make segregation surveys, upon application to the surveyor-general, by the governor of said State, within one year of such application, of all the swamp and overflowed land in such townships, and to report the same to the General Land-Office, representing and describing what land was swamp and overflowed, under the grant, according to the best evidence he can obtain.

If the authorities of said State, shall claim as swamp and overflowed, any land not represented as such upon the map or in the returns of the surveyors, the character of such land at the date of the grant September twenty-eight, eighteen hundred and fifty, and the right to the same shall be determined by testimony, to be taken before the surveyor-general, who shall decide the same, subject to the approval of the Commissioner of the General Land-Office.

SEC. 2489. It shall be the duty of the Commissioner of the General Land Office, to require the officers of the local land offices in said State (in case the same has not already been done) and the surveyor-general immediately to forward lists of all selections made by the State hereinbefore specified and lists and maps of all swamp and overflowed lands, claimed by said State or surveyed as provided in the ten preceding sections, for final disposition and determination, which final disposition shall be made by the Commissioner of the General Land-Office without delay.

SEC. 2490. The provisions of the act of Congress entitled "An act to enable the State of Arkansas and other States to redeem" the swamp lands within their limits, approved September 28, A. D. 1850, extend to the States of Minnesota and Oregon: *Provided*, That the grant shall not include any lands which the Government of the United States may have sold or disposed of under any law, enacted prior to March 12, 1860, prior to the confirmation of title to be made under the authority of said act—and the selections to be made from lands already surveyed in each of the States last named, under the authority of the act aforesaid, shall have been made within two years from the adjournment of the legislature of each State, at its next session after the 12th day of March, A. D. 1860—and as to all lands surveyed or to be surveyed, thereafter, within

two years from such adjournment, at the next session after notice by the Secretary of the Interior to the governor of the State, that the surveys have been completed and confirmed.

12 March, 1860, c. 5, ss. 1, 2, v. 12, p. 3.

III. REPEAL PROVISIONS.

TITLE LXXIV.

Sec.	Sec.
5595. What Revised Statutes embrace	5599. Acts of limitation.
5596. Repeal of acts embraced in revision.	5600. Arrangement and classification of sections.
5597. Accrued rights reserved.	5601. Acts passed since December 1, 1873, not affected.
5598. Prosecutions and punishments.	

SEC. 5595. The foregoing seventy-three titles embrace the statutes of the United States general and permanent in their nature, in force on the 1st day of December one thousand eight hundred and seventy-three, as revised and consolidated by commissioners appointed under an act of Congress, and the same shall be designated and cited, as The Revised Statutes of the United States.

SEC. 5596. All acts of Congress passed prior to said first day of December one thousand eight hundred and seventy-three, any portion of which is embraced in any section of said revision, are hereby repealed, and the section applicable thereto shall be in force in lieu thereof; all parts of such acts not contained in such revision, having been repealed or superseded by subsequent acts, or not being general and permanent in their nature: *Provided*, That the incorporation into said revision of any general and permanent provision, taken from an act making appropriations, or from an act containing other provisions of a private, local, or temporary character, shall not repeal, or in any way affect any appropriation, or any provision of a private, local or temporary character, contained in any of said acts, but the same shall remain in force; and all acts of Congress passed prior to said last-named day no part of which are embraced in said revision, shall not be affected or changed by its enactment.

SEC. 5597. The repeal of the several acts embraced in said revision, shall not affect any act done, or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before the said repeal, but all rights and liabilities under said acts shall continue, and may be enforced in the same manner, as if said repeal had not been made; nor shall said repeal, in any manner affect the right to any office, or change the term or tenure thereof.

SEC. 5598. All offenses committed, and all penalties or forfeitures incurred under any statute embraced in said revision prior to said repeal, may be prosecuted and punished in the same manner and with the same effect, as if said repeal had not been made.

SEC. 5599. All acts of limitation, whether applicable to civil causes and proceedings, or to the prosecution of offenses, or for the recovery of penalties or forfeitures, embraced in said revision and covered by said repeal, shall not be affected thereby, but all suits, proceedings or prosecutions, whether civil or criminal, for causes arising, or acts done or committed prior to said repeal, may be commenced and prosecuted within the same time as if said repeal had not been made.

SEC. 5600. The arrangement and classification of the several sections of the revision have been made for the purpose of a more convenient and orderly arrangement of the same, and therefore no inference or presumption of a legislative construction is to be drawn by reason of the Title, under which any particular section is placed.

SEC. 5601. The enactment of the said revision is not to affect or repeal any act of Congress passed since the 1st day of December one thousand eight hundred and seventy-three, and all acts passed since that date are to have full effect as if passed after the enactment of this revision, and so far as such acts vary from, or conflict with any provision contained in said revision, they are to have effect as subsequent statutes, and as repealing any portion of the revision inconsistent therewith.

Approved, June 22, 1874.

PART SECOND.

LAND LAWS

PASSED BY CONGRESS FROM MARCH 4, 1869, TO MARCH 8,
1875, INCLUSIVE.

I. GENERAL.

No. 1.—A Resolution (No. 9) for the Relief of Settlers upon the Absentee Shawnee Lands in Kansas.

WHEREAS a large tract of lands set apart by a treaty with the Shawnee tribe of Indians, dated May tenth, anno Domini eighteen hundred and fifty-four, and proclaimed November second, anno Domini eighteen hundred and fifty-four, for the benefit of certain absentees of the said Shawnee tribe, is now, and for many years past has been, occupied by a large number of white settlers and citizens of the State of Kansas; and whereas, the beneficial interest of the said absentee Shawnees in said lands was and is absolutely forfeited by reason of their continued absence and non-affiliation with the said Shawnee tribe; and whereas the said lands were ordered to be publicly sold at the United States land office at Topeka, August third, eighteen hundred and sixty-three, by Abraham Lincoln, President, by his proclamation dated March twentieth, anno Domini eighteen hundred and sixty-three, and by reason of the absence of large numbers of said settlers from their homes in the federal armies the sale was indefinitely postponed: Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That each bona fide settler now occupying said lands and having made improvements thereon, or the heirs at law of such, who is a citizen of the United States, or who has declared his intention to become such, shall be entitled to purchase the land so occupied and improved by him, not to exceed one hundred and sixty acres in each case at the price of two dollars and fifty cents per acre, under such rules and regulations as the Secretary of the Interior shall prescribe: *Provided, however,* That the proceeds of said sales shall be applied in accordance with the provisions [of the treaty] between the United States and the said Shawnee Indians, proclaimed November second anno Domini eighteen hundred and fifty-four.

Approved, April, 7, 1869. (16 Stats., p. 53.) See No. 131.

No. 2.—An act to renew certain Grants of Land to the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the grant of lands made to the State of Alabama by the act of Congress approved June three, eighteen hundred and fifty-six, entitled "An act granting public lands in alternate sections to the State of Alabama, to aid in the construction of certain railroads in said State," as were granted to assist in the building of railroads "from near Gadsden to some point on the Alabama and Mississippi State line, in a direction to the Mobile and Ohio Railroad, with a view to connect with the said Mobile and Ohio Railroad," and "from Gadsden to connect with the Georgia and Tennessee line of railroads through Chattooga, Wills and Lookout valleys," is hereby revived and renewed, subject to all the conditions and restrictions contained in the act referred to, and subject to the further limitation that if either of the said railroads is not completed within three years from the passage of this act no further sale shall be made for the benefit of such railroad, and the lands unsold shall revert to the United States: *Provided*, That the lands granted by the act hereby revived, except mineral lands, shall be sold to actual settlers only in quantities not greater than one-quarter section to any one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

SEC. 2. *And be it further enacted,* That the right, power and authority is hereby given to the companies building the aforesaid railroads to take from the public lands adjacent to the lines of said railroads earth, stone and other materials for the construction thereof; and the right of way is hereby granted to the extent of one hundred feet in width on each side of said railroads where they may pass over the public lands, including all necessary grounds for stations and structures connected therewith, not exceeding forty acres at any one station.

Approved, April 10, 1869. (16 Stats., p. 45). See Nos. 34 and 61.

No. 3.—An Act to extend the Time for the Little Rock and Fort Smith Railroad Company to complete the first Section of twenty Miles of said Road.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act approved July twenty-eight, eighteen hundred and sixty-six, entitled "An act to revive and extend the provisions of 'An act granting the right of way and making a grant of land to the States of Arkansas and Missouri, to aid in the construction of a railroad from a point upon the Mississippi river, opposite the mouth of the Ohio river, via Little Rock, to the Texas boundary near Fulton in Arkansas, with branches to Fort Smith and the Mississippi river,' approved February nine, eighteen hundred and fifty-three, and for other purposes" be so amended as to extend the time to the Little Rock and Fort Smith Railroad Company, for building the first section of twenty miles provided for in the second section of said act, for the term of three years from the thirteenth day of May, eighteen hundred and sixty-seven, the time of filing the certificate of organization to said company provided for in the third section of said act; *Provided*, That the land granted by the act hereby revived shall

be sold to actual settlers only, in quantities not greater than one quarter of a section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Approved, April 10, 1869. (16 Stats., p. 46.) See No. 8.

No. 4.—An Act to amend an Act entitled "An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from the Central Pacific Railroad, in California, to Portland, in Oregon," approved July twenty-five, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section six of an act entitled "An act granting lands to aid in the construction of a railroad and telegraph line from the Central Pacific railroad, in California, to Portland, in Oregon," approved July twenty-five, eighteen hundred and sixty-six, be, and the same is hereby, amended so as to allow any railroad company heretofore designated by the legislature of the State of Oregon, in accordance with the first section of said act, to file its assent to such act in the Department of the Interior within one year from the date of the passage of this act; and such filing of its assent, if done within one year from the passage hereof, shall have the same force and effect to all intents and purposes as if such assent had been filed within one year after the passage of said act: Provided, That nothing herein shall impair any rights heretofore acquired by any railroad company under said act, nor shall said act or this amendment be construed to entitle more than one company to a grant of land: And provided further, That the lands granted by the act aforesaid shall be sold to actual settlers only, in quantities not greater than one-quarter section to one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

Approved, April 10, 1869. (16 Stats., p. 47.) See Nos. 10 and 133.

No. 5.—A Resolution (No. 18) enabling bona fide Settlers to purchase certain Lands acquired from the Great and Little Osage Tribe of Indians.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That any bona fide settler residing upon any portion of the lands sold to the United States, by virtue of the first and second articles of the treaty concluded between the United States and the Great and Little Osage tribe of Indians, September twenty-ninth, eighteen hundred and sixty-five, and proclaimed January twenty-first, eighteen hundred and sixty-seven, who is a citizen of the United States or shall have declared his intention to become a citizen of the United States, shall be, and hereby is, entitled to purchase the same in quantity not exceeding one hundred and sixty acres, at the price of one dollar and twenty-five cents per acre, within two years from the passage of this act, under such rules and regulations as may be prescribed by the Secretary of the Interior: Provided, however, That both the odd and even numbered sections of said lands shall be subject to settlement and sale as above provided: And provided, further, That the sixteenth and thirty-sixth sections in each township of said lands shall be reserved for State school purposes in accordance with the provi-

sions of the act of admission of the State of Kansas: *Provided, however,* That nothing in this act shall be construed in any manner affecting any legal rights heretofore vested in any other party or parties.

Approved, April 10, 1869. (16 Stats., p. 55.) See Nos. 27½, 56, 128, 18½ and Title X., Nos. 556 to 562.

No. 6.—Joint Resolution (No. 20) granting right of Way for the Construction of a Railroad from a Point at or near Portland, Oregon, to a Point west of the Cascade Mountains, in Washington Territory.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Northern Pacific Railroad Company be, and hereby is, authorized to extend its branch line from a point at or near Portland, Oregon, to some suitable point on Puget Sound, to be determined by said company, and also to connect the same with its main line west of the Cascade mountains, in the Territory of Washington; said extension being subject to all the conditions and provisions, and said company in respect thereto being entitled to all the rights and privileges conferred by the act incorporating said company, and all acts additional to and amendatory thereof: *Provided,* That said company shall not be entitled to any subsidy in money, bonds, or additional lands of the United States, in respect to said extension of its branch line as aforesaid, except such lands as may be included in the right of way on the line of such extension as it may be located: *And provided further,* That at least twenty-five miles of said extension shall be constructed before the second day of July, eighteen hundred and seventy-one, and forty miles per year thereafter until the whole of said extension shall be completed.

Approved, April 10, 1869. (16 Stats., p. 57.) See No. 114.

No. 7.—An Act to establish a Land District in Wyoming Territory, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the public lands of the United States in the Territory of Wyoming shall constitute a land district, to be called the district of Wyoming, the office for which shall be established at such place, within said district, as the President of the United States may from time to time direct; and the pre-emption laws and all other laws not locally inapplicable are hereby extended to said Territory.

SEC. 2. *And be it further enacted,* That the President of the United States be, and is hereby, authorized to appoint, by and with the advice and consent of the Senate, a surveyor general for Wyoming, with a salary of three thousand dollars per annum, who shall locate his office at such place as the Secretary of the Interior shall from time to time direct, and whose duties, powers, obligations, responsibilities, and allowances for clerk hire, office rent, fuel, and incidental expenses, shall be the same as those of the surveyor-general of Colorado, under the direction of the Secretary of the Interior, and such instructions as he may from time to time deem advisable to give him.

SEC. 3. *And be it further enacted,* That the President be, and hereby is, authorized to appoint, by and with the advice and consent of the

Senate, a register and receiver for said district, who shall respectively be required to reside at the site of said office, and who shall have the same powers, perform the same duties, and receive the same compensation as are now, and may hereafter be, prescribed by law for other land offices of the United States.

Approved, February 5, 1870. (16 Stats., p. 64.)

No. 8.—An Act to amend an Act entitled "Act to extend the Time for the Little Rock and Fort Smith Railroad Company to complete the first Section of twenty miles of said Road," approved April ten, eighteen hundred and sixty-nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the proviso of an act entitled "An act to extend the time for the Little Rock and Fort Smith Railroad Company to complete the first section of twenty miles of said road," approved April ten, eighteen hundred and sixty-nine, be, and the same hereby is, repealed.

Approved, March 8, 1870. (16 Stats., p. 76.) See No. 3.

No. 9.—Joint Resolution (No. 38) to construe an Act entitled "An Act to amend an Act entitled 'An Act to confirm certain private Land Claims in the Territory of New Mexico.'"

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of an act approved February twenty-fifth, eighteen hundred and sixty nine, and entitled "An act to amend an act entitled 'An act to confirm certain private land claims in the Territory of New Mexico,'" as requires that derivative claimants under Vigil and St. Vrain shall establish their claims to the satisfaction of the register and receiver of the proper land district within one year from the passage of said act, shall be so construed as to authorize the presentation of such derivative claims within one year from the completion and approval of the subdivisional surveys contemplated by said act of twenty-fifth February, eighteen hundred and sixty-nine.

SEC. 2. *And be it further resolved, That all settlers entitled by said act to the rights of pre-emption or homestead shall have the further time of thirty days, after notice in their favor of their respective claims, to file their declaratory statements as pre-emptors or to make entry under the homestead laws, as they may select.*

Approved, April 28, 1870. (16 Stats., p. 373.) See Title VI., No. 510.

No. 10.—An Act granting Lands to aid in the Construction of a Railroad and Telegraph Line from Portland to Astoria and McMinville, in the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress Assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland to Astoria, and from a suitable point of junction near Forest Grove to the Yamkill river, near McMinville, in the State of Oregon, there is hereby granted to the Oregon Central Railroad Company, now engaged

in constructing the said road, and to their successors and assigns, the right of way through the public lands of the width of one hundred feet on each side of said road, and the right to take from the adjacent public lands materials for constructing said road, and also the necessary lands for depots, stations, side-tracks, and other needful uses in operating the road, not exceeding forty acres at any one place; and, also, each alternate section of the public lands, not mineral, excepting coal or iron lands, designated by odd numbers nearest to said road, to the amount of ten such alternate sections per mile, on each side thereof, not otherwise disposed of or reserved or held by valid pre-emption or homestead right at the time of the passage of this act. And in case the quantity of ten full sections per mile cannot be found on each side of said road, within the said limits of twenty miles, other lands designated as aforesaid shall be selected under the direction of the Secretary of the Interior on either side of any part of said road nearest to and not more than twenty-five miles from the track of said road to make up such deficiency.

SEC. 2. *And be it further enacted*, That the Commissioner of the General Land-Office shall cause the lands along the line of the said railroad to be surveyed with all convenient speed. And whenever and as often as the said company shall file with the Secretary of the Interior maps of the survey and location of twenty or more miles of said road, the said Secretary shall cause the said granted lands adjacent to and coterminous with such located sections of road to be segregated from the public lands; and thereafter the remaining public lands, subject to sale within the limits of the said grant, shall be disposed of only to actual settlers at double the minimum price for such lands: *And provided also*, That settlers under the provisions of the homestead act who comply with the terms and requirements of said act, shall be entitled, within the said limits of twenty miles, to patents for an amount not exceeding eighty acres each of the said ungranted lands, anything in this act to the contrary notwithstanding.

SEC. 3. *And be it further enacted*, That whenever and as often as the said company shall complete and equip twenty or more consecutive miles of the said railroad and telegraph, the Secretary of the Interior shall cause the same to be examined, at the expense of the company, by three commissioners appointed by him; and if they shall report that such completed section is a first-class railroad and telegraph, properly equipped and ready for use, he shall cause patents to be issued to the company for so much of the said granted lands as shall be adjacent to and coterminous with the said *complected* [completed] sections.

SEC. 4. *And be it further enacted*, That the said alternate sections of land granted by this act, excepting only such as are necessary for the company to reserve for depots, stations, side-tracks, wood-yards, standing ground, and other needful uses in operating the road, shall be sold by the company only to actual settlers, in quantities not exceeding one hundred and sixty acres or a quarter section to any one settler, and at prices not exceeding two dollars and fifty cents per acre.

SEC. 5. *And be it further enacted*, That the said company shall, by mortgage or deed of trust to two or more trustees, appropriate and set apart all the net proceeds of the sales of the said granted lands, as a sinking fund, to be kept invested in the bonds of the United States, or other safe and more productive securities, for the purchase from time to time, and the redemption at maturity, of the first mortgage construction bonds of the company, on the road depots, stations, side-tracks, and

wood-yards, not exceeding thirty thousand dollars per mile of road, payable in gold coin not longer than thirty years from date, with interest payable semi-annually in coin not exceeding the [rate] of seven per centum per annum; and no part of the principal or interest of the said fund shall be applied to any other use until all the said bonds shall have been purchased or redeemed and cancelled; and each of the said first mortgage bonds shall bear the certificate of the trustees, setting forth the manner in which the same is secured and its payment provided for. And the district court of the United States, concurrently with the State courts, shall have original jurisdiction, subject to appeal and writ of error, to enforce the provisions of this section.

SEC. 6. *And be it further enacted*, That the said company shall file with the Secretary of the Interior its assent to this act within one year from the time of its passage; and the foregoing grant is upon condition that said company shall complete a section of twenty or more miles of said railroad and telegraph within two years, and the entire railroad and telegraph within six years, from the same date.

Approved, May 4, 1870. (16 Stats. p. 94.) See Nos. 4 and 133.

No. 11.—An Act to authorize the Burlington and Missouri River Railroad Company, or its Assigns, to change the established Line of said Road in the State of Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Burlington and Missouri River Railroad Company, or its assigns, in the State of Nebraska, may so far change the location of that portion of its line that lies west of the city of Lincoln, in said State, as shown by the map thereof now on file in the General-Land Office of the United States, so as to secure a better and more practicable route, and to connect with the Union Pacific Railroad at or near the Fort Kearney reservation, said new line to be located within the limits of the land grant made by the United States to aid in its construction: *Provided, however*, That said line shall not be located farther south than the so[u]thern boundary line of township number seven, in said State, and said change shall not impair the rights to, nor change the location of the said land grant, and the said company, or its assigns, shall receive no different or other or greater quantity of land than if this act had not passed, and no change had been made in the located line of said railroad.

Approved, May 6, 1870. (16 Stats., p. 118.)

No. 12.—An Act to fix the Point of Junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the common terminus and point of junction of the Union Pacific Railroad Company and the Central Pacific Railroad Company shall be definitely fixed and established on the line of railroad as now located and constructed, northwest of the station at Ogden, and within the limits of the sections of land hereinafter mentioned, viz: section thirty-six of township seven, of range two, situate north and west of the principal meridian and base line in the Territory of Utah, and sections twenty-five, twenty-six and

thirty-five of township seven, of range two, and section six of township six, and sections thirty and thirty-one of township seven, of range one, and sections one and two of township six, of range two, all situate north and west of said principal meridian and base line; and said companies are hereby authorized to enter upon, use, and possess said sections, which are hereby granted to them in equal shares, with the same rights, privileges, and obligations now by law provided with reference to other lands granted to said railroads: *Provided, however*, That the Secretary of the Interior shall designate a section of land in said township seven, of range two, belonging to said companies, and reserve the same for the benefit of schools in said Territory, in accordance with the act of February twenty-one, eighteen hundred and fifty-five, establishing the office of Surveyor-General of Utah, and to grant land for school and university purposes: *Provided also*, That said companies shall pay for any additional lands acquired by this act at the rate of two dollars and fifty cents an acre: *And provided further*, That no rights of private persons shall be affected by this act.

Approved, May 6, 1870. (16 Stats., p. 121.)

No. 13.—A Resolution (No. 53) extending the Time for the Completion of the first Section of twenty miles of the Cairo and Fulton Railroad.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in case the Cairo and Fulton Railroad Company shall complete the first section of twenty miles of said road by the twentieth day of December, eighteen hundred and seventy, and the Secretary of the Interior shall be satisfied with such completion, then the said company shall be entitled to its lands in all respects and to the same extent as it would have been had said twenty miles been completed by the twenty-eighth of April, eighteen hundred and seventy, as provided by law relating to said railroad company.

Approved, May 6, 1870. (16 Stats., p. 376.)

No. 14.—A Resolution (No. 67) authorizing the Northern Pacific Railroad Company to issue its Bonds for the Construction of its Road and to secure the same by Mortgage, and for other Purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Northern Pacific Railroad Company be, and hereby is, authorized to issue its bonds to aid in the construction and equipment of its road, and to secure the same by mortgage on its property and rights of property of all kinds and descriptions, real, personal, and mixed, including its franchise as a corporation; and, as proof and notice of its legal execution and effectual delivery, said mortgage shall be filed and recorded in the office of the Secretary of the Interior; and also to locate and construct, under the provisions and with the privileges, grants, and duties provided for in its act of incorporation, its main road to some point on Puget Sound, via the valley of the Columbia river, with the right to locate and construct its branch from some convenient point on its main trunk line across the Cascade Mountains to Puget Sound; and in the event of there not being in any State or Territory in which said main line or branch may be located, at the time

of the final location thereof, the amount of lands per mile granted by Congress to said company, within the limits prescribed by its charter, then said company shall be entitled, under the direction of the Secretary of the Interior, to receive so many sections of land belonging to the United States, and designated by odd numbers, in such State or Territory, within ten miles on each side of said road, beyond the limits prescribed in said charter, as will make up such deficiency, on said main line or branch, except mineral and other lands as excepted in the charter of said company of eighteen hundred and sixty-four, to the amount of the lands that have been granted, sold, reserved, occupied by homestead settlers, pre-empted, or otherwise disposed of subsequent to the passage of the act of July two, eighteen hundred and sixty four. And that twenty-five miles of said main line between its western terminus and the city of Portland, in the State of Oregon, shall be completed by the first day of January, anno Domini eighteen hundred and seventy-two, and forty miles of the remaining portion thereof each year thereafter, until the whole shall be completed between said points: *Provided*, That all lands hereby granted to said company which shall not be sold or disposed of or remain subject to the mortgage by this act authorized, at the expiration of five years after the completion of the entire road, shall be subject to settlement and pre-emption like other lands, at a price to be paid to said company not exceeding two dollars and fifty cents per acre; and if the mortgage hereby authorized shall at any time be enforced by foreclosure or other legal proceeding, or the mortgaged lands hereby granted, or any of them, be sold by the trustees to whom such mortgage may be executed, either at its maturity or for any failure or default of said company under the terms thereof, such lands shall be sold at public sale, at places within the States and Territories in which they shall be situate, after not less than sixty days' previous notice, in single sections or subdivisions thereof, to the highest and best bidder: *Provided further*, That in the construction of the said railroad, American iron or steel only shall be used, the same to be manufactured from American ores exclusively.

SEC. 2. *And be it further resolved*, That Congress may at any time alter or amend this joint resolution, having due regard to the rights of said company, and any other parties.

Approved, May 31, 1870. (16 Stats., p. 378).

No. 15.—Joint Resolution (No. 87) concerning the Southern Pacific Railroad of California.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the company to the Secretary of the Interior, he shall direct an examination of each such section by commissioners to be appointed by the President, as provided in the act making a grant of land to said company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the commissioners

to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and reserving all the rights of actual settlers, together with the other conditions and restrictions provided for in the third section of said act.

Approved, June 28, 1870. (16 Stats., p. 382.)

No. 16.—An Act to provide for changing the Boundaries of Land Districts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States be, and he is hereby, authorized and empowered to change and re-establish the boundaries of land districts whenever, in his opinion, the public interests will be subserved thereby, without authority to increase the number of land-offices or land-districts.

Approved, June 29, 1870. (16 Stats., p. 171.)

No. 17.—An Act to confirm Entries of Public Land in certain Cases in the State of Alabama.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in cases where entries were made in the State of Alabama under the act of Congress approved the fourth of August, eighteen hundred and fifty-four, entitled "An act to graduate and reduce the price of the public lands to actual settlers and cultivators," and the parties in good faith went upon the land embraced in their entries, and became actual settlers and cultivators thereof, according to the requirements of the law, but were afterwards forced to abandon their homes on the land, in consequence of the disturbed condition of the country during the late war, their entries shall be confirmed and patented to them, their heirs or assigns, respectively, notwithstanding such abandonment, on satisfactory proof of the facts being produced to the Commissioner of the General Land Office, within twelve months from the approval of this act: *Provided*, That nothing in this act shall be so construed as to confirm any entries which have heretofore been annulled and vacated by said Commissioner, on account of fraud, evasion of law, or other special cause: *And provided further*, That this act shall not affect the rights of subsequent purchasers in good faith.*

Approved, July 1, 1870. (16 Stats., p. 182.)

No. 18.—An Act amendatory of "An Act to protect the Rights of Actual Settlers upon the Public Lands of the United States," approved July 27, 1868, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An Act to protect the rights of actual settlers upon the public lands of the United States," approved July twenty-seven, eighteen hundred and

sixty-eight, be, and the same is hereby, amended by adding thereto the following proviso, viz: *Provided*, That all such agricultural college scrip shall be received from actual settlers in payment of pre-emption claims in the same manner and to the same extent as is now authorized by law in case of military bounty-land warrants: *And provided further*, That all locations of such scrip made within thirty days after the date of approval of said act of July twenty-seven, eighteen hundred and sixty-eight, if otherwise in conformity with law, are hereby legalized and made valid.

Approved, July 1, 1870. (16 Stats, p. 186.) Title XVI. Nos. 2, 3.

No. 19.—An Act to confirm the Title of the Heirs of Gervacio Nolan, deceased, to certain Lands in the Territory of Colorado.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant to Gervacio Nolan, late of the valley of Taos, deceased, approved by the surveyor-general of New Mexico October eighth, eighteen hundred and sixty-one, and designated as number forty-eight in the transcript of private land claims in New Mexico, transmitted to Congress by the Secretary of the Interior on the twelfth day of May, eighteen hundred and sixty-two, but being now within the limits of the Territory of Colorado, is hereby confirmed to the extent of eleven square leagues.

SEC. 2. *And be it further enacted*, That the exterior lines of said claim of eleven leagues as confirmed by this act shall be adjusted according to lines of the public surveys as near as practicable, but in a compact form, and the claims of all actual settlers falling within the limits of the located claim above referred to shall be adjusted to the extent which will embrace their several settlements upon their several claims being established either as pre-emptions or homesteads according to law, and for the aggregate of the *arears* [areas] of claims so established under the pre-emption or homestead acts, the heirs of the said Nolan, or their legal representatives, shall be entitled to locate a like quantity of public lands, not mineral, according to the lines of the public surveys, and not to exceed one hundred and sixty acres in one section: *Provided*, That such location shall be made within the bounds of the original grant by the order of Cornelia Vigil to Gervacio Nolan.

SEC. 3. *And be it further enacted*, That it shall be the duty of the Commissioner of the General Land-Office to cause the lines of the public surveys to be run in the regions where a proper location would place the said Nolan claim, and the expense of the same shall be paid out of any moneys in the treasury not otherwise appropriated; but before the confirmation provided for by this act shall become legally effective, the heirs of the said Gervacio Nolan, or their legal representatives, shall pay the cost of so much of said surveys as inures to their benefit respectively, and that all actual settlers whose claims may be adjusted as valid shall have a right to enter their improvements by a strict compliance with the pre-emption or homestead laws.

SEC. 4. *And be it further enacted*, That upon the adjustment of said claim of the heirs of Gervacio Nolan, according to the provisions of this act, it shall be the duty of the surveyor-general of the district to furnish properly approved plats to said claimants, or their legal representatives, which shall be evidence of title, the same to be done according to such

instructions as may be given by the Commissioner of the General Land-Office: *Provided, however,* That when said lands are so confirmed, surveyed, and patented, they shall be held and taken to be in full satisfaction of all further claims or demands against the United States.

SEC. 5. *And be it further enacted,* That immediately upon running the lines provided for in the second section of this act the surveyor-general of the district shall notify the said heirs of Gervacio Nolan, or their legal representatives, of the fact of such survey being made, and said claimants shall, within three months after notice of such survey, select and locate their said claims according to the provisions of this act, and shall, within said time, furnish the surveyor-general with a description of such location, specifying the lines of the same, and the party failing to make such selection and location in such manner and within such time shall be deemed and held to have abandoned their claim, and their rights and equities under this act shall cease and terminate.

Approved, July 1, 1870. (16 Stats., p. 646.)

No. 20.—An Act for the Relief of Pre-emption Settlers in the State of Nebraska.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That settlers upon the public domain within the limits of the State of Nebraska, who, prior to the first day of January, eighteen hundred and seventy, had filed their declaratory statements under the pre-emption laws for tracts once offered at public sale and afterwards included in the lateral limits of any withdrawal for railroad grants, where such lands were at date of filing, as aforesaid, subject to disposal, under said pre-emption laws, and who, through erroneous belief that by such withdrawal the lands so settled upon and claimed became subject to the designation of "unoffered" lands, have failed to make the proof and payment required by law within one year from the date of alleged settlement, shall be, and are hereby, allowed and authorized to make such proof and payment within one year from the passage of this act, upon showing a full compliance with all other provisions of the pre-emption laws: *Provided,* That such settlements were upon the even numbered sections, and do not include cases declared to be invalid by the Commissioner of the General Land-Office.

Approved, July 7, 1870. (16 Stats., p. 188.)

No. 21.—An Act authorizing the Allowance of the Claim of the State of Minnesota to Lands for the Support of a State University.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land-Office be, and he is hereby, authorized and directed in adjusting the claim of the State of Minnesota to lands for the support of a State University, to approve and certify selections of land, made by the governor of said State, to the full amount of seventy-two sections mentioned in the act of Congress approved February twenty-sixth, eighteen hundred [and] fifty-seven, without taking into the account the lands that were reserved at the time of the admission of the

State into the Union, and donated to said State by the Act of Congress approved March second, eighteen hundred and sixty-one.

Approved, July 8, 1870. (16 Stats., p. 196.)

No. 22.—An Act to amend “An Act granting the Right of Way to Ditch and Canal Owners over the public Lands, and for other Purposes”

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act granting the right of way to ditch and canal owners over the public lands, and for other purposes, approved July twenty-six, eighteen hundred and sixty-six, be, and the same is hereby, amended by adding thereto the following additional sections, numbered twelve, thirteen, fourteen, fifteen, sixteen, and seventeen, respectively, which shall hereafter constitute and form a part of the aforesaid act. * * * * *

Approved, July 9, 1870. (16 Stats., p. 217.)

[Revised Statutes, paragraphs 2329 to 2333 inclusive, contain this act. See Copp’s Mining Laws.]

No. 23.—An Act to grant the Right of Way for the Alameda Road through certain lands in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the portion of the tract of land situated in the county of Santa Clara, and State of California, lying between the Rancho Potrero de Santa Clara and the Rancho de los Coches, which is occupied by Santa Clara Street, according to the map of the city of San José, and the street intersecting Santa Clara street, is hereby granted to said city for the purpose of streets. And the parcels of said tract of land lying between said ranchos which are included within the corporate limits of said city, and not occupied as streets, are hereby granted to the respective persons in possession thereof, by themselves or their tenants.

SEC. 2 *And be it further enacted,* That the right of way through that portion of the tract of land lying between the said ranchos, which is situate without the corporate limits of the said city of San José, is hereby granted to the said county of Santa Clara, for public use, for the highways, roads, and sidewalks running along, upon, or across the said tract of land; and authority is hereby granted to the board of supervisors of said county to regulate and determine the number, position, width, and grade of such highways, roads, and sidewalks.

SEC. 3. *And be it further enacted,* That the said tract of land in the second section mentioned, subject to the right of way as therein granted, is hereby granted to the several persons, whether natural or artificial, owning the adjoining lands, the parcel hereby granted to each person being the parcel lying between his or its lands and a line running through the middle of said tract of land.

Approved, July 9, 1870. (16 Stats., p. 218.)

No 24. An Act to vacate the Fort Dakota military Reservation in the Territory of Dakota, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the military reservation at Fort Dakota, in the county of Minnehaha, and Territory of Dakota, be, and the same is hereby, vacated, and the lands embraced in said reservation shall be subject to private entry under the provisions of the pre-emption and homestead laws of the United States, except so much thereof as may be embraced in sections heretofore reserved for school purposes: *Provided,* That nothing in this act shall be so construed as to interfere with any rights which may have accrued previous to the withdrawal of said lands for the purposes of such reservation: *And provided also,* That any improvements on said reservation made by the military authorities prior to its relinquishment by the Secretary of War, shall be appraised by the register and receiver of the land-office of the district in which said reservation is situated, and paid for by the purchaser of the lands on which the same are located: *And provided further,* That no patent shall issue for any portion of said lands until the improvements thereon shall have been paid for at their appraised value.

Approved, July 14, 1870. (16 Stats., p. 275.)

No. 25. An Act to declare forfeited to the United States certain Lands granted to the State of Louisiana to aid in constructing a Railroad therein.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands which were granted by Congress, in the year eighteen hundred and fifty-six, to the State of Louisiana, to aid in the construction of the New Orleans, Opelousas, and Great Western Railroad, and which have not been lawfully disposed of by the said State under said grant, which has expired by limitation, or by act of Congress since the original grant, are hereby declared forfeited to the United States, and these lands shall hereafter be disposed of as other public lands of the United States.

Approved July 14, 1870. (16 Stats, p. 277.)

No. 26.—An Act to extend the Provisions of the Pre-emption Laws to the Territory of Colorado, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the privileges of the act of May thirtieth, eighteen hundred and sixty-two, entitled "An act to reduce the expenses of the survey and sale of the public lands in the United States," be, and the same are hereby, extended to Colorado; and the proviso of the first section of the act approved June second, eighteen hundred and sixty-two, entitled "An act to establish a land-office in the Territory of Colorado, and for other purposes," is hereby repealed.

SEC. 2. *And be it further enacted,* That nothing in the act of Congress approved March twenty-seven, eighteen hundred and fifty-four, entitled "An act for the relief of settlers on lands reserved for railroad

purposes," shall be construed to relieve such settlers from the obligation to file the proper notices of their claims, as in other cases, and all claimants of pre-emption rights shall hereafter, when no shorter period of time is now prescribed by law, make the proper proof and payment for the lands claimed, within eighteen months after the date prescribed for filing their declaratory notices shall have expired: *Provided*, That where said date shall have elapsed before the passage of this act, said pre-emptors shall have one year after the passage hereof in which to make such proof and payment.

Approved, July 14, 1870. (16 Stats., p. 279.) See Title III., Nos. 351, 363, 364.

No. 26½.—An Act making Appropriations for sundry civil Expenses of the Government for the Year ending June thirty, eighteen hundred and seventy-one, and for other Purposes. * * *

For surveying the public lands in Arizona, at rates not exceeding fifteen dollars per lineal mile for standard lines, twelve dollars for township, and ten dollars for section lines, ten thousand dollars: *Provided*, That it shall be the duty of the Surveyor General of Arizona, under such instructions as may be given by the Secretary of the Interior, to ascertain and report upon the origin, nature, character, and extent of the claims to lands in said Territory under the laws, usages, and customs of Spain and Mexico: and for this purpose he shall have all the powers conferred, and shall perform all the duties enjoined upon the Surveyor General of New Mexico, by the eighth section of an act entitled "An act to establish the offices of Surveyor General of New Mexico, Kansas and Nebraska, to grant donations to actual settlers and for other purposes," approved, July twenty-second, eighteen hundred and fifty-four, and his report shall be laid before Congress for such action thereon as shall be deemed just and proper. * * *

Approved, July 15, 1870. (16 Stats., p. 304.)

No. 27.—An Act making Appropriations for the Support of the Army for the Year ending June thirty, eighteen hundred and seventy-one, and for other Purposes. * * *

Sec. 25. *And be it further enacted*, That every private soldier and officer who has served in the army of the United States during the rebellion, for ninety days, and remained loyal to the government, and every seaman, marine, and officer, or other person, who has served in the navy of the United States, or in the marine corps or revenue marine, during the rebellion, for ninety days, and remained loyal to the government, shall, on payment of the fee or commission to any register or receiver of any land office required by law, be entitled to enter one quarter section of land, not mineral, of the alternate reserved sections of public lands along the lines of any one of the railroads or other public works in the United States, wherever public lands have been or may be granted by acts of Congress, and to receive a patent therefor under and by virtue of the provisions of the act to secure homesteads to actual settlers on the public domain, and the acts amendatory thereof, and on the terms and conditions therein prescribed; and all the provisions of said acts, except as herein modified, shall extend and be applicable to entries

under this act, and the Commissioner of the General Land Office is hereby authorized to prescribe the necessary rules and regulations to carry this section into effect, and determine all facts necessary therefor.

Approved, July 15, 1870. (16 Stats., p. 320.) See Title I., No. 265.

No. 271.—An Act making Appropriations for the current and contingent Expenses of the Indian Department and for fulfilling Treaty Stipulations with various Indian Tribes for the Year ending June thirty, eighteen hundred and seventy-one, and for other Purposes. * * * *

SEC. [9.] *And be it further enacted,* That the Secretary of the Interior be, and hereby is, directed to cause to be investigated and to determine the claims of certain Indians of the Winnebago tribe now lawfully residing in the State of Minnesota; to issue patents without the right of alienation to those of them whom he shall find to be entitled thereto for the lands heretofore allotted to them in severalty, or which may have been designated by them for allotment, under the provisions of the treaty ratified March sixteen, eighteen hundred and sixty-one, or of an act entitled "An act for the removal of the Winnebago Indians, and for the sale of their reservation in Minnesota for their benefit," approved February twenty-one, eighteen hundred and sixty-three, and which may not have been sold or disposed of by the United States; and in case of such sale, then such land as may be hereafter designated by them for allotment as aforesaid out of any unsold lands within the limits of said Winnebago reservation in Minnesota, and should it be impracticable to make such allotments within the limits of said reservation on good agricultural lands, then they may be made on any public lands of the United States subject to sale at private entry within the State of Minnesota. And the said Winnebago Indians, and all others being members of said tribe lawfully residing in the State of Minnesota, shall hereafter be entitled to receive their pro rata distributive proportion of all annuities in goods, money, or property, and any other moneys to which said tribe is or may be entitled under any law or treaty now in force, at their homes in Minnesota, the same as though they had removed west and settled with the western Winnebagoes.

SEC [10.] *And be it further enacted,* That if at any time hereafter any of the said Indians shall desire to become citizens of the United States they shall make application to the judge of the district court of the United States for the district of Minnesota, and in open court make the same proof and take the same oath of allegiance as is provided by law for the naturalization of aliens, and shall also make proof to the satisfaction of said court that they are sufficiently intelligent and prudent to control their affairs and interests; that the[y] have adopted the habits of civilized life, and have for at least five years previous thereto been able to support themselves and families; whereupon they shall be declared by said court to be citizens of the United States, which declaration shall be entered of record, and a certificate thereof given to said party. On the presentation of the said certificate to the Secretary of the Interior, with satisfactory proof of identity, he may at the request of such person or persons cause the land severally held by them to be conveyed to them by patent in fee simple, with power of alienation, and may at the same time cause to be paid to them their proportion of all the moneys and effects of said tribe held in trust by or under the provision of any treaty or law of the United States. And on such patents being issued, and such pay-

ments ordered to be made, such persons shall cease to be members of said tribe, and thereafter the lands so patented to them shall be subject to levy, taxation, and sale, in like manner with the property of other citizens.

SEC. [11.] *And be it further enacted*, That the eastern band of the Cherokee Indians, by that name and style be, and they are hereby, authorized and empowered to institute and carry on a suit or suits in law or equity in the district or circuit courts of the United States against the present or former Indian agent or agents of said band, their administrators, executors, and heirs, and against the securities of such agent or agents, their administrators, executors, curators or trustees for all claims, causes of suit or rights in law or equity that said band may have against them or either of them; and the law of limitation shall apply to such claims, causes of action, and rights from and after the day this act takes effect. It shall be the duty of the district attorneys and the Attorney-General of the United States to institute and prosecute all suits, cause for which may arise under this section.

SEC. [12.] *And be it further enacted*, That whenever the Great and Little Osage Indians shall agree thereto, in such manner as the President shall prescribe, it shall be the duty of the President to remove said Indians from the State of Kansas to lands provided or to be provided for them for a permanent home in the Indian Territory, to consist of a tract of land in compact form equal in quantity to one hundred and sixty acres for each member of said tribe, or such part thereof as said Indians may desire, to be paid for out of the proceeds of the sales of their lands in the State of Kansas, the price per acre for such lands to be procured in the Indian Territory not to exceed the price paid or to be paid by the United States for the same. And to defray the expenses of said removal, and to aid in the subsistence of the said Indians during the first year, there is hereby appropriated out of the treasury, out of any money not otherwise appropriated, to be expended under the direction of the Secretary of the Interior, the sum of fifty thousand dollars, to be reimbursed to the United States from the proceeds of the sale of the lands of the said Indians in Kansas, including the trust lands north of their present diminished reservation, which lands shall be open to settlement after survey, excepting the sixteenth and thirty-sixth sections, which shall be reserved to the State of Kansas for school purposes, and shall be sold to actual settlers only, said settlers being heads of families, or over twenty-one years of age, in quantities not exceeding one hundred and sixty acres, in square form, to each settler, at the price of one dollar and twenty-five cents per acre; payment to be made in cash within one year from date of settlement or of the passage of this act; and the United States, in consideration of the relinquishment by said Indians of their lands in Kansas, shall pay annually interest on the amount of money received as proceeds of sale of said lands, at the rate of five per centum, to be expended by the President for the benefit of said Indians, in such manner as he may deem proper. And for this purpose an accurate account shall be kept by the Secretary of the Interior of the money received as proceeds of sale, and the aggregate amount received prior to the first day of November of each year shall be the amount upon which the payment of interest shall be based. The proceeds of sale of said land shall be carried to the credit of said Indians on the books of the treasury, and shall bear interest at the rate of five per cent. per annum: *Provided*, That the diminished reserve of said Indians in Kansas shall be

surveyed under the direction of the Secretary of the Interior as other public lands are surveyed, as soon as the consent of said Indians is obtained as above provided, the expense of said survey to be paid from the proceeds of sale of said land. * * *

Approved, July 15, 1870. (16 Stats., p. 361.)

No. 28.—An Act to amend an Act entitled "An Act granting Lands to the State of Oregon to aid in the Construction of a military Wagon Road from Albany, Oregon, to the eastern Boundary of said State."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act granting lands to the State of Oregon to aid in the construction of a military road from Albany, Oregon, to the eastern boundary of said State," be amended so as to strike out the words "by way of Canyon City," in the first section of said act, and insert instead thereof the words "by way of Camp Harney."

Approved, July 15, 1870. (16 Stats., p. 363.) See No. 114.

No. 29.—An Act granting to the Utah Central Railroad Company a Right of Way through the public Lands for the Construction of a Railroad and Telegraph.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the Utah Central Railroad Company, a corporation created under the laws of the legislative assembly of the Territory of Utah, its successors and assigns, for the construction of a railroad and telegraph from a point at or near Ogden City, in the Territory of Utah, to Salt Lake City, in said Territory; and the right, power and authority is [are] hereby given to said corporation to take from the public lands adjacent to the line of said road material of earth, stone, timber, and so forth, for the construction thereof. Said way is granted to said railroad to the extent of two hundred feet in width on each side of said railroad where it may pass through the public domain, including all necessary ground for station buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations: *Provided*, That within three months from the passage of this act the said Utah Central Railroad Company shall file with the Secretary of the Interior a map to be approved by him, exhibiting the line of the railroad of said company, as the same has been located and constructed: *Provided further*, That said company shall not charge the government higher rates than they do individuals for like transportation and telegraphic service. And it shall be the duty of the Utah Central Railroad Company to permit any other railroad, which has been or shall be authorized to be built by the United States, or by the legislature of the Territory of Utah, to form running connections with its road on fair and equitable terms.

SEC. 2. *And be it further enacted*, That the United States make the grants herein, and that the said Utah Central Railroad Company accepts the same, upon the express condition that the said company shall not exercise the power given by section ten of chapter sixteen of the laws of the Territory of Utah, approved February nineteenth, eighteen

hundred and sixty-nine; and upon the further express condition that if the said company make any breach of the conditions hereof, then in such case, at any time hereafter, the United States, by its Congress, may do any and all acts and things which may be needful and necessary for the enforcement of such conditions.

SEC. 3. *And be it further enacted*, That said Utah Central Railroad shall be a post route and a military road, subject to the use of the United States for postal, military, naval, and all other government service, and also subject to such regulations as Congress may impose, restricting the charges for such government transportation.

SEC. 4. *And be it further enacted*, That the acceptance of the terms, conditions and impositions of this act, by the said Utah Central Railroad Company, shall be signified in writing under the corporate seal of said company, duly executed pursuant to the direction of its board of directors first had and obtained, which acceptance shall be made within three months after the passage of this act, and shall be served on the President of the United States; and if such acceptance and service shall not be so made, this grant shall be void.

SEC. 5. *And be it further enacted*, That Congress may at any time, having due regard for the rights of said Utah Central Railroad Company, add to, alter, amend, or repeal this act.

Approved, December 15, 1870. (16 Stats., p. 395.)

No. 30.—Joint Resolution (No. 24) relative to School Lands in the State of Oregon.

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That Congress hereby assents to the application of the five hundred thousand acres of land granted to the State of Oregon by the act of Congress approved September four, eighteen hundred and forty-one, to the support of common schools, as provided in section two, article eight, of the constitution of said State: *Provided*, That nothing herein shall influence the construction or effect of the act admitting said State into the Union as to said application.

Approved, February 9, 1871. (16 Stats., p. 595.)

No. 31.—An Act to repeal an Act entitled "An Act for the Survey of Grants or Claims of Land," approved June second, eighteen hundred and sixty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act for the survey of grants or claims of land," approved June second, eighteen hundred and sixty-two, being chapter XC. of the acts of the second session of the Thirty-seventh Congress of the United States, be, and the same is hereby, repealed: *Provided*, That the repeal of said act shall not affect any rights heretofore acquired under the same.

Approved, February 18, 1871. (16 Stats., p. 416.) See Title VI., Nos. 506, 507.

No. 32.—An Act to provide for the Disposition of useless military Reservations.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized and empowered to transfer to the custody and control of the Secretary of the Interior, for disposition for cash, according to the existing laws of the United States relating to the public lands, after appraisement, to the highest bidder, and at not less than the appraised value, nor at less than one dollar and twenty-five cents per acre, the United States military reservations at Forts Lane and Walla-Walla, in the State of Oregon; Fort Zarah, in the State of Kansas; Camp McGarry, in the State of Nevada; Fort Sumner, in the Territory of New Mexico; Forts Jessup and Sabine, in the State of Louisiana; Fort Wayne and Fort Smith, in the State of Arkansas; such portion of the Fort Abercrombie reservation as lies east of the Red River of the North; and such portions of the reservation at Fort Bridger, in the Territory of Wyoming, as may no longer be required for military purposes: *Provided*, That the Secretary of the Interior shall, whenever in his opinion the public interests may require it, cause any of the foregoing reservations, or part thereof, to be subdivided into tracts less than forty acres each, or into town lots: *And provided also*, That each subdivision shall be appraised and offered separately at public outcry, to the highest bidder, as hereinbefore provided, after which any unsold land or lot shall be subject to sale at private entry for the appraised value, at the proper land-office: *And provided further*, That should there be improvements of buildings, or of building materials, or other valuable property, the Secretary of the Interior shall have them appraised; and no patent shall issue for the real estate until the improvements are paid for, at the appraised value thereof, under such regulations as may be prescribed by the said Secretary.

SEC. 2. *And be it further enacted*, That the right is hereby granted to Dalles City to have and use the waters of Mill creek flowing through the military reservation of Fort Dalles, Oregon, and the right of way to convey the same through said reservation for the purposes of supplying Dalles City with water and for manufacturing purposes.

SEC. 3. *And be it further enacted*, That permission is granted to the corporated authorities of Dalles City to extend Liberty Street southerly, on the line of the same, through said reservation, and [that] the land lying east thereof be, and the same is, granted to said Dalles City, in fee, upon the payment to the United States therefor [of] the sum of five dollars per acre.

SEC. 4. *And be it further enacted*, That the land hereby granted said city shall be surveyed under the direction of the surveyor-general for the State of Oregon upon application to him made by the mayor of said city; and the expenses of such survey shall be paid by said Dalles City.

Approved, February 24, 1871. (16 Stats., p. 430.) See Nos. 202, 204.

No. 33.—An Act to incorporate the Texas Pacific Railroad Company, and to aid in the Construction of its Road, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That John C Fre-

mont, James L. Alcorn, G. M. Dodge, O. C. French, John D. Caldwell, J. J. Noah, A. C. Osborne, Timothy Hurley, C. C. Pool, Silas N. Martin, John M. Corse, George E. Wentworth, Philip H. Morgan, J. D. Cameron, Marshal O. Roberts, James L. Hodges, John Ray, W. Vermilye, Enoch L. Faucher, Charles F. Livermore, Joseph H. Oglesby, John Whytock, Daniel Drew, F. S. Davis, W. Orton, A. C. Babcock, Thomas A. Scott, Samuel D. Hoffman, H. Ramsdale, William H. Jackson, R. C. Parsons, Delos W. Emmons, M. A. Southworth, John H. Hall, G. C. Kinzey, W. P. Clark, James Dart, H. Jacobs, L. T. Smith, W. P. Dole, C. A. Weed, A. P. K. Safford, H. McCullough, Charles Jackson, Elisha Dyer, Alfred Anthony, James Hoy, M. W. Benjamin, H. D. Cooke, Joseph R. West, W. S. Huntington, J. M. Tebbetts, C. C. Leondridge, D. D. Porter, M. Woodhull, Hiram Price, M. C. Hunter, W. T. Walters, J. B. Brownlow, T. A. Morris, Owen Tuller, J. H. Ledlie, R. M. Bishop, Samuel Craighead, D. N. Stanton, Augustus H. Whiting, G. L. Johnston, J. W. Goodland, Powell Clayton, Samuel Tate, W. Bolton, H. Robinson, George Maney, O. H. Bynum, M. Burns, J. C. Goodloe, E. G. Barney, Cyrus Busey, J. W. Forney, J. Lockwood, E. M. Davis, N. Patton, W. Flanagan, G. O'Brien, G. P. Buel, G. H. Gidding, J. J. Newell, E. W. Rice, R. M. Shoemaker, Samuel Sloan, S. W. Morton, J. B. Bowman, L. M. Flournoy, J. J. Hinds, G. R. Weeks, J. T. Ludling, B. C. Gilbert, B. D. Williams, Thomas Olcott, G. A. Fosdick, Harry Hays, P. S. Forbes, John T. Sprague, L. R. Marsh, A. W. Beckwith, J. C. Stanton, Cyrus H. Baldwin, A. J. Hamilton, Rush R. Sloan, Silas C. Colgrove, Sam'l. D. Jones, N. H. Decker, William N. Leet, B. F. Allen, J. B. Chaves, Augustus Kountze, John N. Goodwin, William S. Rosecrans, Michael Hahn, H. C. Warmouth, J. S. Williams, G. M. Spencer, L. J. Higby, W. C. Kimball, and all such persons as shall or may be associated with them, and their successors, are hereby created a body politic and corporate in fact and in law, by the name, style, and title of the Texas Pacific Railroad Company, and by that name shall have perpetual succession, and shall be able to sue and be sued, plead and be impleaded, defend and be defended, in all courts of law and equity within the United States, and may make and use a common seal; and the said corporation is hereby authorized and empowered to lay out, locate, construct, furnish, maintain, and enjoy a continuous railroad and telegraph line, with the appurtenances, from a point at or near Marshall, county of Harrison, State of Texas; thence by the most direct and eligible route, to be determined by said company, near the thirty-second parallel of north latitude, to a point at or near El Paso; thence by the most direct and eligible route, to be selected by said company, through New Mexico and Arizona, to a point on the Rio Colorado, at or near the southeastern boundary of the State of California; thence by the most direct and eligible route to San Diego, California, to ship's channel, in the bay of San Diego, in the State of California, pursuing in the location thereof, as near as may be, the thirty-second parallel of north latitude, and is hereby vested with all the powers, privileges, and immunities necessary to carry into effect the pur[po]ses of this act.

SEC. 2. That the persons named in the first section of this act shall constitute a board of commissioners, (twenty of whom shall constitute a quorum for the transaction of business,) to be known as the Texas Pacific Railroad commissioners, who shall meet in the city of New York within ninety days after the passage of this act, at a time to be designated in

a notice to be signed by the person first named in the list of corporators and six of his associates, and to be published for two weeks in, at least, one daily newspaper in New York, New Orleans, and Washington; and, when so met, they may cause books to be opened for the subscription of the capital stock of said company, and when twenty thousand shares, amounting to two millions of dollars, shall have been subscribed, and ten per centum actually paid thereon, in money, to the treasurer, to be elected by said commissioners, who shall give bond for its safe keeping and payment to the treasurer of the company when organized, then it shall be lawful for such subscribers or stockholders, or a majority thereof, to organize said company in accordance with the provisions of this act, and to elect not less than seven, nor more than seventeen directors, a majority of whom shall be necessary to the transaction of business, and who shall hold their offices for one year and until their successors shall be elected and qualified; and the said directors shall immediately proceed to elect a president, vice-president, secretary, and treasurer; the president and vice-president shall be directors. At all elections for directors, each share of stock shall be entitled to one vote, which may be given by the holders in person, or by proxy, who shall also be a shareholder. The directors shall hold their offices for any term not exceeding three years, as may be provided in the by-laws; and the annual meetings of stockholders shall take place as provided for in said by-laws.

SEC. 3. That the capital stock of the Texas Pacific Railroad Company shall be fixed by the board of directors, at a sum not exceeding fifty millions of dollars, in shares of one hundred dollars; and when the amount is so fixed, it shall never be increased except by consent of Congress. Assessments upon said stock shall only be made by a majority vote of the whole number of directors at a regular meeting, which said assessments shall be paid at the expiration of thirty days after a notice given in one newspaper in each of the cities of Washington, Philadelphia, New York, and New Orleans.

SEC. 4. That the said Texas Pacific Railroad Company shall have power and lawful authority to purchase the stock, land grants, franchises, and appurtenances of, and consolidate on such terms as may be agreed upon between the parties, with any railroad company or companies heretofore chartered by congressional, State, or territorial authority, on the route prescribed in the first section of this act; but no such consolidation shall be with any competing through line of railroads to the Pacific Ocean.

SEC. 5. That the said company shall have power and authority to make running arrangements with any railroad company or companies heretofore chartered, or that may hereafter be chartered by congressional, State, or territorial authority; also to purchase lands, or to accept donations, or grant of lands, or other property, from States or individuals, for the purpose of aiding in carrying out the object of this company.

SEC. 6. That the rights, lands, land grants, franchises, privileges and appurtenances, and property of every description, belonging to each of the consolidated or purchased railroad company or companies, as herein provided, shall vest in and become absolutely the property of the Texas Pacific Railroad Company: *Provided*, That in all contracts made and entered into by said company with any and all other railroad company or companies, to perfect such aforesaid consolidation or purchase, the indebtedness or other legal obligations of said company or companies

shall be assumed by the said Texas Pacific Railroad Company as may be agreed upon, and no such consolidation or purchase shall impair any lien which may exist on any of the railroads so consolidated or purchased; but said company shall not assume the debts or obligations of any company with which it may consolidate or purchase as aforesaid, to an amount greater than the cash value of the assets received from the same.

SEC. 7. That the said Texas Pacific Railroad Company shall have power to make and enforce rules and by-laws for the election of its officers and the government and management of the business of the company, and to do and perform all needful and proper things to be done and performed to promote the objects of the company hereby incorporated, not inconsistent with the laws of the United States and the provisions of this charter.

SEC. 8. That the right of way through the public lands, be, and the same is hereby, granted to the said company for the construction of the said railroad and telegraph line, and the right, power, and authority is hereby given to said company to take, from the public lands adjacent to the line of said road, earth, stone, timber, and other materials for the construction thereof. Said right of way is granted to said company to the extent of two hundred feet in width on each side of said railroad where it may pass over the public lands; and there is also hereby granted to said company grounds for stations, buildings, workshops, wharves, switches, side-tracks, turn-tables, water-stations, and such other structures as may be necessary for said railroad, not exceeding forty acres of land at any one point.

SEC. 9. That for the purpose of aiding in the construction of the railroad and telegraph line herein provided for, there is hereby granted to the said Texas Pacific Railroad Company, its successors and assigns, every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as such line may be adopted by said company, through the Territories of the United States, and ten alternate sections of land per mile on each side of said railroad in California, where the same shall not have *not have* been sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed. In case any of said lands shall have been sold, reserved, occupied, or pre-empted, or otherwise disposed of, other lands shall be selected in lieu thereof by said company, under the direction of the Secretary of the Interior, in alternate sections, and designated by odd numbers, not more than ten miles beyond the limits of said alternate sections first above named, and not including the reserved numbers. If, in the too near approach of the said railroad line to the boundary of Mexico, the number of sections of land to which the company is entitled cannot be selected immediately on the line of said railroad, or in lieu of mineral lands excluded from this grant, a like quantity of unoccupied and unappropriated agricultural lands, in odd-numbered sections nearest the line of said railroad may be selected as above provided; and the word "mineral," where it occurs in this act, shall not be held to include iron or coal: *Provided, however,* That no public lands are hereby granted within the State of California further than twenty miles on each side of said road, except to make up deficiencies as aforesaid, and then not to exceed twenty miles from the lands originally granted. The

term "ship's channel," as used in this bill, shall not be construed as conveying any greater right to said company to the water front of San Diego bay than it may acquire by gift, grant, purchase, or otherwise, except the right of way, as herein granted: *And provided, further,* That all such lands, so granted by this section to said company, which shall not be sold, or otherwise disposed of, as provided in this act, within three years after the completion of the entire road, shall be subject to settlement and pre-emption like other lands, at a price to be fixed by and paid to said company, not exceeding an average of two dollars and fifty cents per acre for all the lands herein granted.

SEC. 10. That when the route of said railroad and telegraph line shall pass through the lands of private persons, or where it may be necessary for said railroad company to take any lands belonging to private persons for any of the purposes herein mentioned necessary to said road, such right of way through or title to such lands, shall be secured in accordance with the laws of the State or Territory in which they may be situated.

SEC. 11. That the Texas Pacific Railroad Company shall have power and authority to issue two kinds of bonds, secured by mortgage, namely: first, construction bonds; second, land bonds. Construction bonds shall be secured by mortgage, first, on all or any portion of the franchises, road-bed, or track of said railroad, and all the appurtenances thereto belonging, when constructed or in the course of construction, from a point at or near Marshall, to ship's channel, in the bay of San Diego, in the State of California, as aforesaid. Land bonds shall be secured by mortgage, first, on all or any portion of the lands hereby granted in aid of the construction of said railroad as is provided for in this act; second, on lands acquired by any arrangement or purchase or terms of consolidation with any railroad company or companies to whom grants of lands may have been made, or may hereafter be made, by any congressional, State, or territorial authority, or who may have purchased the same previous to any such arrangement or consolidation: *Provided,* That all the mortgages made and executed by said railroad company shall be filed and recorded in the Department of the Interior, which shall be a sufficient evidence of their legal execution, and shall confer all the rights and property of said company as therein expressed: *And provided also,* That the proceeds of the sales of the aforesaid construction and land bonds shall be applied only in the construction, operation, and equipment of the contemplated railroad line: *And provided further,* That said mortgage shall in no wise impair or affect any lien existing on the property of said company or companies at or before the time of such consolidation.

SEC. 12. That whenever the said company shall complete the first and each succeeding section of twenty consecutive miles of said railroad and put it in running order as a first-class road in all its appointments, it shall be the duty of the Secretary of the Interior to cause patents to be issued conveying to said company the number of sections of land opposite to and coterminous with said completed road to which it shall be entitled for each section so completed. Said company, within two years after the passage of this act, shall designate the general route of its said road, as near as may be, and shall file a map of the same in the Department of the Interior; and when the map is so filed, the Secretary of the Interior, immediately thereafter, shall cause the lands within forty miles on each side of said designated route within the Territories, and twenty

miles within the State of California, to be withdrawn from pre-emption, private entry, and sale: *Provided, however,* That the provisions of the act of September, eighteen hundred and forty-one, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twenty, eighteen hundred and sixty-two, and the amendments thereto, shall be, and the same are hereby, extended to all other lands of the United States on the line of said road when surveyed, except those hereby granted to said company.

SEC. 13. That the president of the company shall annually, by the first day of July, make a report and file it with the Secretary of the Interior, which report shall be under oath, exhibiting the financial situation of the company, the amount of money received and expended, and the number of miles of road constructed each year; and further, the names and residences of the stockholders, of the directors, and of all other officers of the company, the amount of stock subscribed, and the amount thereof actually paid in, a description of the lines of road surveyed and fixed upon for construction, the amount received from passengers and for freight, respectively, on the road, a statement of the expenses of said road and its fixtures, and a true statement of the indebtedness of said company and the various kinds thereof.

SEC. 14. That the certificates of the capital stock must be signed by the president and secretary, and attested by the seal of the company, and shall contain an extract from the proceedings of the board of directors fixing the amount thereof, as well as from this act, authorizing such issue. All the bonds and mortgages issued by said company must be signed by the president and secretary, and attested by the seal of said company, and shall contain an extract from the law authorizing them to be issued. The face value of said bonds shall be one thousand dollars in gold, and shall be redeemable at such times, and to bear such rate of interest, payable semi-annually in gold, as may be determined by the directors. The total value of the construction bonds to be issued shall not exceed thirty thousand dollars per mile of said railroad, and the total face value of the land bonds shall not exceed two dollars and fifty cents per acre for all lands mortgaged, the total amount of each to be determined by the board of directors.

SEC. 15. That all railroads constructed, or that may be hereafter constructed, to intersect said Texas Pacific railroad, shall have a right to connect with that line; that no discrimination as regards charges for freight or passengers, or in any other matter, shall be made by said Texas Pacific Railroad Company against any of the said connecting roads; but that the same charges per mile as to passengers, and per ton to mile as to freight, passing from the said Texas Pacific railroad over any of said connecting roads, or passing from any of said connecting roads over any part of said Texas Pacific railroad, shall be made by said company as they make for freight, and passengers over their own road: *Provided also,* That said connecting roads shall reciprocate said right of connection and equality of charges with said Texas Pacific railroad: *And provided further,* That the rates charged for carrying passengers and freight, per mile, shall not exceed the prices which may be fixed by Congress for carrying passengers and freight on the Union Pacific and Central Pacific railroads.

SEC. 16. That said road shall be constructed of iron or steel rails manufactured from American ore, except such as may have heretofore

been contracted for by any railroad company which may be purchased or consolidated with by the company hereby incorporated, as provided by this act.

SEC. 17. That the said Texas Pacific Railroad Company shall commence the construction of its road simultaneously at San Diego, in the State of California, and from a point at or near Marshall, Texas, as hereinbefore described, and so prosecute the same as to have at least fifty consecutive miles of railroad from each of said points complete and in running order within two years after the passage of this act; and to so continue to construct each year thereafter a sufficient number of miles to secure the completion of the whole line from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and upon failure to so complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion.

SEC. 18. That the President of the United States, upon the completion of the first section of twenty miles, shall appoint one commissioner, whose duty it shall be to examine the various sections of twenty miles as they shall be completed, and report thereon to him in writing; and if, from such report, he be satisfied that said company has fully completed each section of its road, as in this act provided, he shall direct the Secretary of the Interior to issue patents to said company for the lands it is entitled to under this act, as fast as each section of said road is completed.

SEC. 19. That the Texas Pacific Railroad Company shall be, and it is hereby, declared to be a military and post road; and for the purpose of insuring the carrying of the mails, troops, munitions of war, supplies, and stores of the United States, no act of the company nor any law of any State or Territory shall impede, delay, or prevent the said company from performing its obligations to the United States in that regard: *Provided*, That said road shall be subject to the use of the United States for postal, military, and all other governmental services, at fair and reasonable rates of compensation, not to exceed the price paid by private parties for the same kind of service, and the government shall at all times have the preference in the use of the same for the purpose aforesaid.

SEC. 20. That it shall not be lawful for any of the directors, either in their individual capacity or as members of an incorporated or joint-stock company, to make any contracts or agreements with the said Texas Pacific Railroad Company for the construction, equipment, or running of its road, or to have any interest therein; and all such contracts or agreements are hereby declared null and void, and all money or property received under such contracts or agreements may be recovered back for the benefit of the company by any stockholder.

SEC. 21. That any railroad company whose route lies across the route of the Texas Pacific railroad may cross the same, and for the purpose of crossing shall have the right to acquire at the double minimum price all lands, whether of the United States or granted by this act, which shall be needed for a right of way two hundred feet wide through said lands, and for depots, stations, side-tracks, and other needful purposes, not exceeding for such purposes forty acres at any one station.

SEC. 22. That the New Orleans, Baton Rouge, and Vicksburg railroad Company, chartered by the State of Louisiana, shall have the

right to connect by the most eligible route to be selected by said company with the said Texas Pacific railroad at its eastern terminus, and shall have the right of way through the public land to the same extent granted hereby to the said Texas Pacific Railroad Company; and in aid of its construction from New Orleans to Baton Rouge, thence by the way of Alexandria, in said State, to connect with the said Texas Pacific Railroad Company at its eastern terminus, there is hereby granted to said company, its successors and assigns, the same number of alternate sections of public lands per mile in the State of Louisiana, as are by this act granted in the State of California, to said Texas Pacific Railroad Company; and said lands shall be withdrawn from market, selected, and patents issued therefor, and opened for settlement and pre-emption, upon the same terms and in the same manner and time as is provided for and required from said Texas Pacific Railroad Company, within said State of California: *Provided*, That said company shall complete the whole of said road within five years from the passage of this act.

SEC. 23. That, for the purpose of connecting the Texas Pacific railroad with the city of San Francisco, the Southern Pacific Railroad Company of California is hereby authorized (subject to the laws of California) to construct a line of railroad from a point at or near Tehachapa Pass, by way of Los Angeles, to the Texas Pacific railroad at or near the Colorado river, with the same rights, grants and privileges, and subject to the same limitations, restrictions, and conditions as were granted to said Southern Pacific Railroad Company of California, by the act of July twenty-seven, eighteen hundred and sixty-six: *Provided, however*, That this section shall in no way affect or impair the rights, present or prospective, of the Atlantic and Pacific Railroad Company or any other railroad company.

Approved, March 3, 1871. (16 Stats., p. 573.) See Nos. 53, 121.

No. 34.—An Act to renew certain Grants of Land to the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant of lands made to the State of Alabama by the act of Congress approved June three, eighteen hundred and fifty-six, entitled "An act granting public lands, in alternate sections, to the State of Alabama, to aid in the construction of certain railroads in said State," to assist in the building of a railroad from the city of Montgomery, Alabama, to some point on the Alabama and Tennessee State line, in the direction of Nashville, is hereby revived and renewed for the use and benefit of the South and North Alabama Railroad Company, subject to all the conditions and restrictions contained in the act referred to, and subject to the further limitation, that if the said railroad is not completed within three years from the passage of this act no further sale shall be made for the benefit of said road, and the lands unsold shall revert to the United States: *Provided*, That the lands granted by the act hereby revived, except mineral lands, shall be sold to actual settlers only, in quantities not greater than one quarter section to any one purchaser, and for a price not exceeding two dollars and fifty cents per acre.

SEC. 2. That the right, power, and authority is hereby given to the company building the aforesaid railroad to take from the public land,

adjacent to the lines of said railroad, earth, stone, and other materials for the construction thereof; and the right of way is hereby granted to the extent of one hundred feet in width on each side of said railroad where it may pass over the public lands, including all necessary grounds for stations and structures connected therewith, not exceeding forty acres at any one station.

Approved, March 3, 1871. (16 Stats., p. 580.) See No. 2.

No. 35.—An Act amendatory of an Act entitled "An Act to further provide for giving Effect to the various Grants of public Lands to the State of Nevada," approved June eighth, eighteen hundred and sixty-eight.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section four of an act entitled "An act to further provide for giving effect to the various grants of public lands to the State of Nevada," be, and the same is hereby, amended so as to read as follows: And it is further enacted that the land granted to the State of California for the establishment of an agricultural college by the act of July second, eighteen hundred and sixty-two, and acts amendatory thereto, may be selected by said State from any lands within said State, subject to pre-emption settlement, entry, sale, or location, under any laws of the United States. Such selection may be made in any legal subdivisions, adjoining by sides, so as to constitute bodies of not less than one hundred and sixty acres; or they may be made in separate subdivisions of forty, eighty, or one hundred and twenty acres, respectively: *Provided*, That this privilege shall not extend to lands upon which there may be rightful claims under the pre-emption and homestead laws, nor to mineral lands: *And provided further*, That if lands be selected as aforesaid, the minimum price of which is two dollars and fifty cents per acre, they shall be taken acre for acre in part satisfaction of the grant, and the State of California shall pay to the United States the sum of one dollar and twenty-five cents per acre for each acre so selected, when the same shall be patented to the State by the United States: *Provided fu[rt]her*, That where lands, sought to be selected for the agricultural college, are unsurveyed, the proper authorities of the State shall file a statement to that effect with the register of the United States land-office, describing the land by township and range, and shall make application to the United States Surveyor-General for a survey of the same, the expenses of the survey for field work to be paid by the State, provided there be no appropriation by Congress for that purpose. The United States Surveyor-General, as soon as practicable, shall have the said lands surveyed and the township plats returned to the United States land-office, and lands so surveyed and returned shall, for thirty days after the filing of the plats in the United States land-office, be held exclusively for location for the agricultural college, and within said thirty days the proper authorities of the State shall make application to the United States land-office for the lands sought to be located by sections and parts of sections: *Provided*, That any rights, under the pre-emption or homestead laws, acquired prior to the filing of the required statement with the United States register, shall not be impaired or affected by this act: *And provided further*, That such selections shall be made*

in every other respect subject to the conditions, restrictions, and limitations contained in the acts hereby modified.

Approved, March 3, 1871. (16 Stats., p. 581.) See Title V., Nos. 440, 441.

No. 36.—An Act to amend an Act entitled “An Act to reduce the Expenses of the Survey and Sale of the public Lands in the United States,” approved May thirty, eighteen hundred-and sixty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled “An act to reduce the expenses of the survey and sale of the public lands in the United States,” approved May thirty, eighteen hundred and sixty-two, be, and the same is hereby, amended by adding thereto the following additional section, to be numbered as section eleven, viz? :—

“**SEC. 11.** *And be it further enacted,* That in all cases where settlers shall make deposits in accordance with this act, to the credit of the United States, for public surveys, such amounts so deposited shall go in part payment for their lands situated in the townships, the surveying of which is paid for out of said deposits; and effect shall be given to this act by regulations to be prescribed by the Commissioner of the General Land-Office.

Approved, March 3, 1871. (16 Stats., p. 581.) See Title II., No. 278, and Title XIV., Nos. 596, 597, 598.

No. 37.—An Act to extend the Time for the Reversion to the United States of the Lands granted by Congress to the State of Michigan to aid in the Construction of a Railroad from Pere Marquette to Flint, in said State, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time specified in the fourth section of the act of Congress, approved June third, eighteen hundred and fifty-six, entitled “An act making a grant of alternate sections of the public land to the State of Michigan to aid in the construction of certain railroads in said State, and for other purposes,” for the reversion to the United States of the lands granted by said act to aid in the construction of a railroad from Pere Marquette to Flint, and for the completion of said road, be, and the same is hereby, further extended for the period of five years from and after the passage of this act.

SEC. 2. That the State of Michigan may authorize the sale of sixty sections of the land granted to aid the construction of said railroad from Pere Marquette to Flint, whenever and as often as the governor of said State shall certify that ten additional miles of said railroad is completed and in running order as a first-class railroad: *Provided,* That said lands authorized to be sold as aforesaid shall include only lands situated opposite to and coterminous with the completed sections: *And provided,* That in case said railroad shall not be fully completed from Flint to Lake Michigan within the time as extended by this act, all the lands included in said grant to which the right to sell shall not then have attached shall revert to the United States.

Approved, March 3, 1871 (16 Stats., p. 582.) See Title IV., No. 404.

No. 38.—An Act to extend the Benefits of the Donation Law of September twenty-seven, eighteen hundred and fifty, to certain Persons.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons who, at the time of settlement, possessed the qualifications prescribed in the fourth and fifth sections of "An act to create the office of surveyor-general of the public lands in Oregon and to provide for the survey, and to make donations to settlers of the said public lands," approved September twenty-seven, eighteen hundred and fifty, and who made bona fide settlement upon the lands claimed by the Puget Sound Agricultural Company, in Washington Territory, within the time limited for settlement by said act and the amendments thereto, shall be, and are hereby declared to be, entitled to all the privileges and benefits of said act and amendments.

Sec. 2. That the rights and privileges of heirs and assigns under the said donation law, and the amendments thereto, shall be, and are hereby, extended to the heirs and assigns of the settlers named in the first section of this act.

Approved, March 3, 1871. (16 Stats., p. 583.)

No. 39.—An Act to enable the Jackson, Lansing and Saginaw Railroad Company to change the northern Terminus of its Road from Traverse Bay to the Straits of Mackinaw, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Jackson, Lansing, and Saginaw Railroad Company, a corporation organized and existing under the laws of the State of Michigan, and to which the said State granted a portion of the land grant made to aid in the construction of a railroad from Amboy, by Hillsdale and Lansing, to some point on or near Traverse bay, by an act entitled "An act making a grant of alternate sections of the public lands to the State of Michigan to aid in the construction of certain railroads in said State, and for other purposes," approved June three, eighteen hundred and fifty-six, be, and hereby is, empowered and authorized to change the northern terminus of its railroad from Traverse bay to some point on or near the straits of Mackinaw, in said State of Michigan, and to change the location of the incompleated portion of its railroad, so as to obtain the most direct and suitable practicable route from Saginaw river to the straits of Mackinaw: *Provided,* That such change shall lessen the length of said line by rendering it more direct: *And provided further,* That no change in the location of said line of railroad shall have the effect or be construed to work any change in the land grant made to aid in the construction of said road: *And provided also,* That such new location shall be made within the limits of such land grant until the northern limit of said grant is passed.

Sec. 2. That only the lands embraced within the limits of the said grant as the same was originally located under said act of Congress of June three, eighteen hundred and fifty-six, shall pertain to said railroad, or be applicable to aid in the building of the same, whether it be constructed on such new or improved location, or on the said original location. But all the lands within the limits of said grant now remaining

unsold, and of the character described and embraced in said act of Congress, whether heretofore listed and certified by the Commissioner of the Land-Office as inuring under said grant or not, shall belong to and be applicable to aid in the construction of said railroad, whether built on said improved or said original location, and the said company, on completing its said railroad, or any portion thereof, within the time and in the manner required by law, namely, on or before June third, eighteen hundred and seventy-three, the time limited in the act of Congress of July third, eighteen hundred and sixty-six, on such new or improved line, shall be entitled to the same amount of said lands for each mile of said railroad so constructed as if the same had been built on the line originally located under said act: *Provided*, That said company shall not be entitled to any of said lands for that part of its said new or improved line situate to the northward of the limits of its said land grant, and between that point and the straits of Mackinaw; but the right of way for said railroad over the public lands on its new or improved location is hereby granted.

Approved, March 3, 1871. (16 Stats., p. 586.)

No. 40.—An Act authorizing the St. Paul and Pacific Railroad Company to change its Line in Consideration of a Relinquishment of Lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Saint Paul and Pacific Railroad Company may so alter its branch lines that, instead of constructing a road from Crow Wing to St. Vincent, and from St. Cloud to the waters of Lake Superior, it may locate and construct, in lieu thereof, a line from Crow Wing to Brainerd, to intersect with the Northern Pacific railroad, and from St. Cloud to a point of intersection with the line of the original grant at or near Otter Tail or Rush lake, so as to form a more direct route to St. Vincent, with the same proportional grant of lands to be taken in the same manner along said altered lines, as is provided for the present lines by existing laws: *Provided, however*, That this change shall in no manner enlarge said grant, and that this act shall only take effect upon condition of being in accord with the legislation of the State of Minnesota and upon the further condition that proper releases shall be made to the United States by said company, of all lands along said abandoned lines from Crow Wing to St. Vincent, and from St. Cloud to Lake Superior, and that upon the execution of said releases such lands so released shall be considered as immediately restored to market without further legislation.

Approved, March 3, 1871. (16 Stats., p. 588.) See Nos. 124, 217.

No. 41.—A Resolution (No. 52) for the Relief of Settlers on the public Lands.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the settlers on the public lands of the United States who have been required to make proof and payment for their lands under the act to extend the provisions of the pre-emption laws to the Territory of Colorado, and for other purposes, approved July fourteen, eighteen hundred and seventy, and by instructions from the general land office, under date July thirty, eigh-

teen hundred and seventy, shall have twelve months' additional time given them under which to make such proof and payment.

Approved, March 3, 1871. (16 Stats. p. 601.) See No. 26 and Title III. No. 364.

No. 42.—An Act to enable the Leavenworth, Lawrence and Galveston Railroad Company to relocate a portion of its Road.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Leavenworth, Lawrence and Galveston Railroad Company, for the purpose of improving its route and accommodating the country, may relocate any portion of its road south of the town of Thayer, within the limits of its grant, as prescribed by the act of Congress entitled "An act for a grant of lands to the State of Kansas, in alternate sections, to aid in the construction of certain railroads and telegraphs in said State," approved March third, eighteen hundred and sixty-three, but not thereby to change, enlarge, or diminish said land grant.

Approved, April 19, 1871. (17 Stats., p. 5.)

No. 43.—An Act making Appropriations to supply Deficiencies in the Appropriations for the Service of the Year ending June thirtieth, eighteen hundred and seventy-one, and for additional Appropriations for the Service of the Year ending June thirtieth, eighteen hundred and seventy-two, and for other Purposes. * * *

SEC. 16. That any bona-fide settler under the homestead or pre-emption laws of the United States who has filed the proper application to enter not to exceed one quarter-section of the public lands in any district land-office, and who has been subsequently appointed a register or receiver, may perfect the title to the said land under the pre-emption laws by furnishing the proofs and making the payments required by law, to the satisfaction of the Commissioner of the General Land-Office.

*Approved, April 20, 1871. (17 Stats., p. 10.) * * **

No. 44.—An Act to enable the Houghton and Ontonagon Railroad Company to make a Resurvey of its Road.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Houghton and Ontonagon Railroad Company, a corporation organized and existing under the laws of the State of Michigan, and upon which the said State, in pursuance of a joint resolution of Congress approved May twentieth, eighteen hundred and sixty-eight, has conferred the grants of land made to aid in the construction of a road from Marquette to Ontonagon, be authorized to make a resurvey and new location of that part of the line between Marquette and Ontonagon to be constructed by said company: *Provided,* That the said company shall be entitled to select and receive only its complement of lands for each mile of road constructed and completed, in the manner required by law, from the alternate odd-numbered sections of lands belonging to the United States and within the limits heretofore assigned to said line of road: *Provided further,* That on the completion of said survey a map of the new line

shall be filed with the Commissioner of the General Land-Office: *And provided further*, That said company shall not be entitled to receive any lands for any increased length of the new line hereby authorized, and shall only be entitled to receive its lands coterminous with its line of road as completed: *And provided*, That nothing contained in this act shall be held to interfere with homestead or pre-emption rights under existing laws.

Approved, April 20, 1871. (17 Stats., p. 643.)

No. 45.—An Act to set apart a certain Tract of Land lying near the Headwaters of the Yellowstone River as a public Park.

[Included in sections 2474 and 2475 of the Revised Statutes.]

Approved, March 1, 1872. (17 Stats., p. 32.)

No. 46.—An Act for the Relief of Lucas, O'Brien, Dickinson, and other Counties in the State of Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner of the General Land-Office is hereby authorized and required to receive and examine the selections of swamp-lands in Lucas, O'Brien, Dickinson, and such other counties in the State of Iowa as formerly presented their selections to the surveyor-general of the district including that State, and allow or disallow said selections, and indemnity provided for according to the acts of Congress in force touching the same at the time such selections were made, without prejudice to legal entries or the rights of bona-fide settlers under the homestead and pre-emption laws of the United States prior to the date of this act.

Approved, March 5, 1872. (17 Stats., p. 37.)

No. 47.—An Act to continue in Force a Grant to the State of Nevada for College Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the grant made to the State of Nevada under section three of the act of July fourth, eighteen hundred and sixty-six, entitled "An act concerning certain lands granted to the State of Nevada," shall not cease by reason of the failure of the said State to provide at least one college, as required by the several acts of Congress as a condition of said grant, but the same shall continue in full force: *Provided*, That all the conditions of law be complied with prior to the tenth of May, eighteen hundred and seventy-seven.

Approved, March 16, 1872. (17 Stats., p. 40.)

No. 48.—An Act for the Relief of Pre-emption Settlers in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all bona-fide

pre-emption claimants who may have filed their declaratory statements, prior to the passage of this act, upon any of the public lands in the State of California, shall have one year from and after the passage of this act in which to make proof and payment of their respective claims.

Approved, March 22, 1872. (17 Stats., p. 43.) See Title III., No. 364.

No. 49.—An Act to enable honorably discharged Soldiers and Sailors, their Widows and orphan Children, to acquire Homesteads on the public lands of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every private soldier and officer who has served in the army of the United States during the recent rebellion for ninety days, or more, and who was honorably discharged, and has remained loyal to the government, including the troops mustered into the service of the United States by virtue of the third section of an act entitled "An act making appropriations for completing the defences of Washington, and for other purposes," approved February thirteenth, eighteen hundred and sixty-two, and every seaman, marine, and officer who has served in the navy of the United States, or in the marine corps, during the rebellion, for ninety days, and who was honorably discharged, and has remained loyal to the government, shall, on compliance with the provisions of an act entitled "An act to secure homesteads to actual settlers on the public domain," and the acts amendatory thereof, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands (not mineral) not exceeding one hundred and sixty acres, or one quarter-section, to be taken in compact form according to legal sub-divisions, including the alternate reserved sections of public lands along the line of any railroad or other public work, not otherwise reserved or appropriated, and other lands subject to entry under the homestead laws of the United States: *Provided*, That said homestead settler shall be allowed six months after locating his homestead within which to commence his settlement and improvement: *And provided also*, That the time which the homestead settler shall have served in the army, navy, or marine corps aforesaid, shall be deducted from the time heretofore required to perfect title, or if discharged on account of wounds received, or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served: *Provided, however*, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his said homestead for a period of at least one year after he shall commence his improvements as aforesaid.

SEC. 2. That any person entitled under the provisions of the foregoing section to enter a homestead, who may have heretofore entered under the homestead laws a quantity of land less than one hundred and sixty acres, shall be permitted to enter under the provisions of this act so much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

SEC. 3. That in case of the death of any person who would be entitled to a homestead under the provisions of the first section of this act, his widow, if unmarried, or in case of her death or marriage, then his

minor orphan children, by a guardian duly appointed and officially accredited at the Department of the Interior, shall be entitled to all the benefits enumerated in this act, subject to all the provisions as to settlement and improvements therein contained: *Provided*, That if such person died during his term of enlistment, the whole term of his enlistment shall be deducted from the time heretofore required to perfect the title.

SEC. 4. That where a party at the date of his entry of a tract of land under the homestead laws, or subsequently thereto, was actually enlisted and employed in the army or navy of the United States, his services therein shall, in the administration of said homestead laws, be construed to be equivalent, to all intents and purposes, to a residence for the same length of time upon the tract so entered: *Provided*, That if his entry has been cancelled by reason of his absence from said tract while in the military or naval service of the United States, and such tract has not been disposed of, his entry shall be restored and confirmed: *And provided further*, That if such tract has been disposed of, said party may enter another tract subject to entry under said laws; and his right to a patent therefor shall be determined by the proofs touching his residence and cultivation of the first tract, and his absence therefrom in such service.

SEC. 5. That any soldier, sailor, marine, officer, or other person coming within the provisions of this act, may, as well by an agent as in person, enter upon said homestead: *Provided*, That said claimant in person shall, within the time prescribed, commence settlements and improvements on the same, and thereafter fulfill all the requirements of this act.

SEC. 6. That the Commissioner of the General Land-Office shall have authority to make all needful rules and regulations to carry into effect the provisions of this act.

Approved, April 4, 1872. (17 Stats., p. 49.) Repealed by Act of June 8, 1872. No. 73.

No. 50.—An Act for the Relief of Thomas B. Valentine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the ninth circuit court of the United States, of California, be, and hereby is, authorized and required to hear and decide upon the merits, the claim of Thomas B. Valentine, claiming title, under a Mexican grant to Juan Miranda, to a place called the Rancho Arroyo de San Antonio, situate in the county of Sonoma, and State of California, in the same manner, and with the same jurisdiction, as if the claim to the said tract of land had been duly presented to the board of land commissioners under the provisions of the act entitled "An act to ascertain and settle the private land claims in the State of California," approved March third, eighteen hundred and fifty-one, and an appeal had been duly taken from their decision to the district court of California, by the said Thomas B. Valentine.

SEC. 2. That on the said hearing any testimony heretofore taken before the said board of commissioners, in relation to said claim on behalf of the said claimant, or of the United States, may be read, subject to all just exceptions to its competency; and additional testimony, on either part, may be taken, under the order and direction of said circuit court, as to the validity and extent of said claim.

SEC. 3. That an appeal shall be taken from the final decision and decree of said circuit court to the Supreme Court of the United States, by either party, in accordance with the provisions of the tenth section of said act of March third, eighteen hundred and fifty-one, within six months after the rendition of such final decision; and a decree under the provisions of this act, in favor of said claim, shall not affect any adverse right or title to the lands described in said decree; but in lieu thereof, the claimant, or his legal representatives, may select, and shall be allowed, patents for an equal quantity of the unoccupied and unappropriated public lands of the United States, not mineral, and in tracts not less than the subdivisions provided for in the United States land laws, and, if unsurveyed when taken, to conform, when surveyed, to the general system of the United States land surveys; and the Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, shall be authorized to issue scrip, in legal subdivisions, to the said Valentine, or his legal representatives, in accordance with the provisions of this act: *Provided*, That no decree in favor of said Valentine shall be executed nor be of any force or effect against any person or persons; nor shall land scrip or patents issue as hereinbefore provided, unless the said Valentine shall first execute and deliver to the Commissioner of the General Land-Office a deed conveying to the United States all his right, title, and interest to the lands covered by said Miranda grant.

Approved, April 5, 1872. (17 Stats., p. 649.) Title XVI., Nos. 637, 638.

No. 51.—An Act to settle and quiet the Titles to Lands along the Boundary Line between the States of Georgia and Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the titles to all lands lying south of the line dividing the States of Georgia and Florida, known as the Orr and Whitner line, lately established as the true boundary between said States, and north of the line run by Georgia, known as the Watson line, being all the lands lying between said lines, be, and the same are hereby, confirmed, so far as the United States has title thereto, in the present owners deriving titles from the State of Georgia.

Approved, April 9, 1872. (17 Stats., p. 52.)

No. 52.—An Act granting the Right of Way through the public Lands for the Construction of a Railroad from Great Salt Lake to Portland, Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railroad and telegraph line from Portland, in the State of Oregon, by the way of Dalles city, to some suitable point on the Union Pacific or Central Pacific Railroad in the vicinity of Salt Lake, not further east than Green River, with a branch from a suitable point west of the Blue Mountains to a suitable point in Walla-Walla Valley, there are hereby granted to the Portland, Dalles, and Salt Lake Railroad Company, organized under articles of incorporation filed in the office of the Secretary of State of Oregon on the twenty-

fifth day of March, anno Domini eighteen hundred and seventy-one, and to their successors and assigns, a strip of land one hundred feet wide on each side of the centre line of said road, and the necessary lands for depots, stations, side-tracks, and other needful uses in operating said road and telegraph, not exceeding forty acres at any one place: *Provided*, That the locations for depots, stations, and side-tracks shall not exceed for the whole line of said road more than one location of forty acres for every ten miles of the same, and when made upon surveyed lands shall conform to the government surveys thereof.

SEC. 2. That said company shall, within six months after the location of any section of twenty miles or more of their said road, if the same be upon surveyed land, and if upon unsurveyed land, then within six months after the survey thereof by the United States, file a plat of such located section, together with proof thereof, with the register of the land office for the district wherein said located section may be situated, and upon approval thereof the same shall be noted upon the township plats in said office, and thereafter all lands over which the said line of road shall pass shall be sold, located, or disposed of by the United States, subject to such right of way so located as aforesaid: *Provided*, That the line of said road shall be located within three years after the passage of this act: *And provided further*, That said road shall be completed within ten years thereafter.

Approved, April 12, 1872. (17 Stats., p. 52.) See No. 97.

No. 53.—An Act supplementary to an Act entitled "An Act to incorporate the Texas Pacific Railroad Company, and to aid in the Construction of its Road, and for other Purposes", approved March third, eighteen hundred and seventy-one.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the name, style, and title of the Texas Pacific Railroad Company shall hereafter be "The Texas and Pacific Railway Company;" and the said The Texas and Pacific Railway Company shall have, possess, and enjoy all the rights, privileges, and franchises heretofore conferred upon the said Texas Pacific Railroad Company.

SEC. 2. That the said The Texas and Pacific Railway Company shall have power and authority to issue the construction and land bonds authorized by the eleventh section of said act of incorporation, for such amounts, not exceeding forty thousand dollars per mile of said road, of construction bonds, as said company may deem needful to provide for the construction and equipment of its line, and to include in the mortgage or mortgages to secure said construction bonds all or any portion of the lands granted in aid of the construction of said railroad; and in the mortgage or mortgages to secure said land bonds, any portion of said lands not so used to secure the construction bonds aforesaid; and all or any portion of the lands acquired by the terms of consolidation lawfully authorized by the fourth section of said act of March third, eighteen hundred and seventy-one, with any railroad company or companies to whom grants of land may have been made, or may hereafter be made, by any congressional, State, or territorial authority, or who may have purchased the same previous to any such arrangement or consolidation, and within the time limited for the completion of the road, and all such lands or

every description shall be subject to all limitations and conditions now by law existing in relation thereto, and as modified by this act; and this act shall not be construed to revive, enlarge, extend, or create any land grant whatever, beyond that heretofore granted by Congress, and which shall duly inure to said company upon compliance with the terms of this act in relation to the times fixed for completion of said railway, and all such mortgages shall be subject to all the conditions and limitations by law existing under this act and the acts to which it is supplementary in respect to such lands, and shall not be held to vest any title in the mortgage or create any lien on such lands, other than such company is or may become lawfully entitled to vest or create thereunder; but the amount of said land bonds shall not exceed two and a half dollars per acre for all lands covered by the mortgage or mortgages securing the same.

SEC. 3. That all the mortgages made and executed by said railroad company shall be filed and recorded in the Department of the Interior, which shall be a sufficient evidence of their legal execution: *Provided*, That the aforesaid bonds and the authorized capital stock, or the proceeds thereof, shall be applied only for the purpose of securing the construction, operation, and equipment of the contemplated railroad line, under lawful contracts with such parties, and on such terms and conditions as said company may deem needful, and for the further purpose of purchase, consolidation, completion, equipment, and operating of the other roads, as contemplated by said act and specified therein, being a part of the aforesaid railroad line, and for the expenses necessary and incident to the works authorized thereby: *Provided, however*, That said road and its equipment shall be of the standard heretofore required by the United States government for the existing Pacific railway lines: *And provided further*, That said mortgage or mortgages shall in nowise impair or affect any lien existing on the property of said company or companies at or before the time of such consolidation.

SEC. 4. That said road shall be constructed of iron and steel rails manufactured from American ore, except such as may have been contracted for before consolidation by any railroad company which may be purchased by or consolidated with this company.

SEC. 5. That the said Texas and Pacific Railway Company shall commence the construction of its road at or near Marshall, Texas, and proceed with its construction, under the original act and this supplement, or in pursuance of the authority derived from any consolidation as aforesaid, westerly from a point near Marshall, and towards San Diego, in the State of California, on the line authorized by the original act, and so prosecute the same as to have at least one hundred consecutive miles of railroad from said point complete and in running order within two years after the passage of this act; and so continue to construct, each year thereafter, a sufficient number of miles, not less than one hundred, to secure the completion of the whole line, from the aforesaid point on the eastern boundary of the State of Texas to the bay of San Diego, in the State of California, as aforesaid, within ten years after the passage of this act; and said road from Marshall, Texas, throughout the length thereof, shall be of uniform gauge: *Provided, however*, That the said company shall commence the construction of said road from San Diego eastward within one year from the passage of this act, and construct not less than ten miles before the expiration of [the] second year, and, after the second year, not less than twenty-five miles per annum in continuous line,

thereafter between San Diego and the Colorado river until the junction is formed with the line from the east at the latter point or east thereof; and upon failure to so complete it, Congress may adopt such measures as it may deem necessary and proper to secure its speedy completion; and it shall also be lawful for said company to commence and prosecute the construction of its line from any other point or points on its line; but nothing in this act contained shall be so construed as to authorize the grant of any additional lands or subsidy, of any nature or kind whatsoever, on the part of the government of the United States: *Provided*, That said Texas and Pacific Railway Company shall be, and it is hereby, authorized and required to construct, maintain, control, and operate a road between Marshall, Texas, and Shreveport, Louisiana, or control and operate any existing road between said points, of the same gauge as the said Texas and Pacific railroad; and that all roads terminating at Shreveport shall have the right to make the same running connections, and shall be entitled to the same privileges, for the transaction of business in connection with the said Texas and Pacific railway, as are granted to roads intersecting therewith: *Provided further*, That nothing herein shall be construed as changing the terminus of said Texas and Pacific railway from Marshall as provided in the original act.

SEC. 6. That all acts or parts of acts inconsistent with this supplement be, and the same are [*are*] hereby, repealed.

Approved, May 2, 1872. (17 Stats., p. 59.) See Nos. 33, 121.

No. 54.—An Act to provide for the Removal of the Kansas Tribe of Indians to the Indian Territory, and to dispose of their Lands in Kansas to actual Settlers.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized and empowered to cause to be appraised and sold so much of the lands heretofore owned by the Kansas tribe of Indians in the State of Kansas, and which was ceded to the United States in trust in the treaty made by the United States and said Indians proclaimed November seventeenth, anno Domini eighteen hundred and sixty, and which remain unsold, in the following manner, viz: The said Secretary shall appoint three disinterested and competent persons, who shall, after being duly sworn to perform said service faithfully and impartially, personally examine and appraise said lands by legal subdivisions of one hundred and sixty acres or less, separately from the value of any improvements on the same, and also the value of said improvements, distinguishing between improvements made by members of said Indian tribe, the United States, and white settlers, and make return thereof to the Commissioner of Indian Affairs: *Provided*, That the Secretary of the Interior may, in his discretion, set aside any appraisements that may be made under the provisions of this section, and cause a new appraisement to be made.

SEC. 2. That each bona-fide settler at the time occupying any portion of said lands and having made valuable improvements thereon, or the heirs at law of such, who is a citizen of the United States, or who has declared his intention to become such, shall be entitled, at any time within one year from the approval of said appraisement, to purchase,

for cash, the land so occupied and improved by him, not to exceed one hundred and sixty acres in each case, at the appraised value thereof, including the appraised value of any improvements which may have been made by the United States or any of said Indians on the same, under such rules and regulations as the Secretary of the Interior may prescribe.

SEC. 3 That all the lands mentioned in the first section of this act now occupied by bona-fide settlers, as mentioned in the second section of this act, remaining unsold at the expiration of one year from the approval of said appraisement, shall be sold at public sale, after due advertisement, to the highest bidder for cash, in tracts not exceeding one hundred and sixty acres; and all the lands mentioned in the first section of this act which shall be unoccupied by bona-fide settlers at the date of such appraisement may be sold at any time after the approval of said appraisement, at public sale, after due advertisement, to the highest bidder for cash, in tracts not exceeding one hundred and sixty acres, under such rules and regulations as the Secretary of the Interior may prescribe: *Provided*, That in no case shall any of the lands mentioned in this act be sold at less than their appraised value: *And provided further*, That the Secretary of the Interior may, in his discretion, open any of said lands remaining unsold after having been publicly offered to cash entry at their appraised value, subject to the rights of bona-fide settlers as provided for in this act: *Provided, however*, That the proceeds of the sale of said lands and improvements, after paying the expenses of said appraisement and sale, shall be applied in accordance with the provisions of said treaty in the payment of the liquidated indebtedness of said Kansas tribe of Indians pro rata as the same shall be received, and the excess, if any, shall be distributed to the said Indians, per capita, in money.

SEC. 4. That if said Kansas tribe of Indians shall signify to the President of the United States their desire to sell their diminished reserve, as indicated in said treaty, including lands held in severalty and in common, and to remove from the State of Kansas, and shall so agree in such manner as the President may prescribe, the Secretary of the Interior may cause the same to be appraised in legal subdivisions as hereinbefore provided for the appraisement of the so-called "trust lands," and sold in quantities not exceeding one hundred and sixty acres at not less than its appraised value, after due notice, to the highest bidder or bidders on sealed bids, including improvements of every character, and no preference shall be given to settlers on any part of said diminished reserve, and the appraised value of any improvements on any part of said diminished reserve made by any member of said tribe shall be paid to him or her in person, and the residue of the proceeds of said sales shall belong to said tribe in common, fifty per centum of which shall be placed to their credit on the books of the treasury, and bear interest at the rate of five per centum per annum, said interest to be paid to them semi-annually for the term of twenty years, after which period the principal shall be paid to the members of said tribe per capita, and the remaining fifty per centum of the proceeds of sales as aforesaid shall be used in providing and improving for them new homes in the Indian Territory, and in subsisting them until they may become self-sustaining: *Provided*, That if any adult member of said tribe to whom an allotment was assigned under the provision of articles one and two of said treaty of November, eighteen hundred and sixty, shall desire to remain upon the same, such member of said tribe shall, upon satisfying the Secretary of the Interior that he or she is the person to whom such allotment was origi-

nally assigned, and that he or she has, since the date of such assignment, continued to occupy and cultivate the same, be entitled to demand and receive for such allotment a patent in fee-simple; but such land so patented shall be exempt from levy, taxation, or sale during the natural life of such Indian.

Approved, May 8, 1872. (17 Stats., p. 85.) See No. 125 and Title X., Nos. 567, 568.

No. 55.—An Act to extend the Time of Payment for their Lands by Persons holding Pre-emptions on the public Lands in the States of Minnesota, Wisconsin, and Michigan, and Territory of Dakota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons holding pre-emptions upon any of the public lands of the United States within the States of Minnesota, Wisconsin, and Michigan, and Territory of Dakota, whose final payment has not been made, shall be allowed the additional time of one year in which to make final proof and payment from the time at which such pre-emptions are required to be paid for by the present laws.

Approved, May 9, 1872. (17 Stats., p. 88.) Title III, No. 367.

No. 56.—An Act for the Relief of Settlers on the Osage Lands in the State of Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Osage Indian trust and diminished reserve lands in the State of Kansas, excepting the sixteenth and thirty-sixth sections in each township, shall be subject to disposal, for cash only, to actual settlers, in quantities not exceeding one hundred and sixty acres or one quarter-section to each, in compact form, in accordance with the general principles of the pre-emption laws, under the direction of the Commissioner of the General Land-Office: *Provided,* That claimants shall file their declaratory statements as prescribed in other cases upon unoffered lands, and shall pay for the tracts, respectively, settled upon within one year from date of settlement where the plat of survey is on file at that date, and within one year from the filing of the township plat in the district office where such plat is not on file at date of settlement.

SEC. 2. That any actual settler upon these lands who may have failed to pay for and enter the land settled upon by him under the act of July fifteenth, eighteen hundred and seventy, shall have three months from the date of this act in which to file his declaratory statement, and shall be required to prove up his claim and pay for the land before the first day of January, eighteen hundred and seventy-three. And in case of failure of any party to comply with the provisions of this act, the land claimed by him or her shall be subject to the settlement and entry of any other qualified person: *Provided,* That all the persons availing themselves of the provisions of this section shall be required to pay, and there shall be collected from them, at the time of making payment for their land, interest on the total amounts paid by them, respectively, at the rate of five per centum per annum, from the date at which they would have been required to make payment under the act of July fifteenth, eighteen hundred and seventy, until the date

of actual payment: *Provided further*, That the twelfth section of said act of July *sixteenth* [fifteenth], eighteen hundred and seventy, is hereby so amended that the aggregate amount of the proceeds of sale received prior to the first day of March of each year shall be the amount upon which the payment of interest shall be based.

SEC. 3. That the sale or transfer of his or her claim upon any portion of these lands by any settler prior to the issue of the Commissioner's instructions of April twenty-sixth, eighteen hundred and seventy-one, shall not operate to preclude the right of entry, under the provisions of this act, upon another tract settled upon subsequent to such sale or transfer: *Provided*, That satisfactory proof of good faith be furnished upon such subsequent settlement: *Provided further*, That the restrictions of the pre-emption laws relating to previous enjoyment of the pre-emption right, to removal from one's own land in the same State, or the ownership of over three hundred and twenty acres, shall not apply to any settler actually residing on his or her claim at the date of the passage of this act.

Approved, May 9, 1872. (17 Stats., p. 90.) See Nos. 5, 27 $\frac{1}{2}$, 128, 181 $\frac{1}{2}$, and Title X., 555 to 561.

No. 57.—An Act to promote the Development of the mining Resources of the United States.

Approved, May 10, 1872. (17 Stats., p. 91).

[Contained in the Revised Statutes; Sections 2318 to 2344 inclusive. See Copp's Mining Laws].

No. 58.—An Act to carry out certain Provisions of the Cherokee Treaty of eighteen hundred and sixty-six, and for the Relief of Settlers on the Cherokee Lands in the State of Kansas.

WHEREAS in order that certain provisions of the treaty of July nineteenth, eighteen hundred and sixty-six, between the United States and the Cherokee nation may be rendered clearer, and made more satisfactory to settlers upon the lands known as the "Cherokee strip," in the State of Kansas, said settlers having moved thereon since the date of said treaty, and for the purpose of facilitating the sale of said lands: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the strip of land lying west of the Neosho river, and included in the State of Kansas, conveyed to the Cherokee nation of Indians by the United States, and now belonging to said nation, shall be surveyed, under the direction of the Commissioner of the General Land-Office, in the same manner as the public lands of the United States are surveyed, and shall be by him offered for sale under the provisions and restrictions of this act; and all the lands in said tract lying east of the Arkansas river shall be sold at two dollars per acre, and all lands in said tract lying west of said river shall be sold at one dollar and fifty cents per acre, except as hereinafter provided: *Provided*, That where there is a fraction of land less than forty acres, the same shall be sold with the contiguous tract, expense of survey to be paid out of the proceeds of said land in accordance with the treaty of July ninth, eighteen hundred and sixty-six.

SEC. 2. That each person being the head of a family or over twenty-

one years of age who has made a bona-fide settlement and improvement upon any portion of said lands, and is now occupying the same, or, in case of his or her death, the heirs of such, or, if such heirs are minors, their guardians for them, shall be entitled to enter and purchase the lands so settled upon and occupied, not exceeding one hundred and sixty acres, at the price fixed in the first section of this act, payment for which shall be made at any time within one year from the date of the approval by the Secretary of the Interior of the acceptance of the provisions of this act, as provided for in the fifth section hereof; and all persons heads of families or over twenty-one years of age who may settle upon said lands at any time within one year from the date of the passage of this act, may purchase the land so settled upon, not exceeding one hundred and sixty acres, at the price fixed in the first section of this act, and shall make payment therefor within one year from the date of said settlement: *Provided*, That all lands not sold under the foregoing provisions of this section, and all lands settled upon but unpaid for at the expiration of the limitation named in the foregoing provisions of this act, shall, unless such payment be suspended by reason of contest or appeal, be sold by the Secretary of the Interior, on sealed bids after due advertisement, in tracts not exceeding one hundred and sixty acres, and at not less than the price fixed in the first section of this act: *Provided further*, That proof of settlement, entry, and payment shall be made at the land-office of the proper district, under such regulations as the Commissioner of the General Land-Office shall prescribe: *And provided further*, That the town-site laws shall be, and hereby are, extended to and made applicable to said lands, subject to the provisions of this act: *And provided further*, That the Secretary of the Interior may cause public advertisement to be made of the provisions of this act.

SEC. 3. That any Cherokee citizen, or the heirs at law of such who had rights under the Cherokee laws to any portion of said lands, and whose titles were valid at the date of the treaty of eighteen hundred and sixty-six, and who may be able to establish such validity within one year from the date of the passage of this act, under such rules as the Secretary of the Interior may prescribe, shall receive the proceeds of the sale of such identical lands, not exceeding one hundred and sixty acres, instead of their being invested as hereinafter provided for in the fourth section of this act.

SEC. 4. That all moneys accruing from the sales of land under this act shall, without unnecessary delay, be invested in the registered five per centum bonds of the United States, as provided in the twenty-third article of the treaty of eighteen hundred and sixty-six.

SEC. 5. That the sale of said lands, as hereinbefore provided for, shall not take place until the provisions of this act are accepted by the Cherokee national council, or by a delegation duly authorized thereby; which acceptance shall be filed with the Secretary of the Interior, and, when approved by him, the same shall be final and conclusive.

Approved, May 11, 1872. (17 Stats., p. 98) See No. 107.

No. 59.—An Act declaring the Lands constituting the Fort Collins military Reservation, in the Territory of Colorado, subject to Pre-emption and Homestead Entry, as provided for in existing Laws.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands con-

stituting the Fort Collins military reservation, in the Territory of Colorado, so far as the same have not been lawfully disposed of since their reservation, are hereby restored to the United States and made subject to pre-emption and homestead entry only, as now provided for by law.

Approved, May 15, 1872. (17 Stats., p. 120.)

No. 60.—An Act to reduce the limits of the military Reservation at Fort Stanton, New Mexico.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby authorized and instructed to reduce the limits of the military reservation at Fort Stanton, in New Mexico, to a tract not exceeding sixteen square miles. The new limits of said reservation shall embrace a strip of land eight miles in length, and shall extend one mile from each bank of the Rio Bonito; the boundaries thereof to be determined by the Secretary of War, and the balance of the reservation to be thrown open to entry and settlement under the laws of the United States.

Approved, May 21, 1872. (17 Stats., p. 139.)

No. 61.—An Act relating to certain Lands in the State of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands heretofore certified to the State of Alabama by the Commissioner of the General Land-Office for the benefit of the railroad from Selma to Gadsden, then known as the Alabama and Tennessee River Railroad, under act of Congress, entitled "An act granting public lands in alternate sections to the State of Alabama to aid in the construction of certain railroads," approved June third, eighteen hundred and fifty-six, be, and the same are hereby, confirmed to the said State of Alabama for the sole use and benefit of the Selma, Rome, and Dalton Railroad Company, the successors of the said Alabama and Tennessee Railroad Company.

SEC. 2. That the right of way and use of a strip of land one hundred feet in width from the centre and on each side of the said railroad, as the same is now located and constructed, upon and over any lands of the United States in the State of Alabama, be, and the same is hereby, granted to the said Selma, Rome, and Dalton Railroad Company.

Approved, May 23, 1872. (17 Stats., p. 159.)

No. 62.—An Act to authorize the Chicago and Northwestern Railway Company to change their projected Line of Railway in the State of Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Chicago and Northwestern Railway Company are hereby authorized to change and relocate that part of their projected line of railway "from the city of Fond du Lac, in the State of Wisconsin, northerly to Esconaba, in the State of Michigan," which lies in said State of Michigan, so as to run said line from "at or near the mouth of the Menomonee river to Esco-

naba," on such line within the limits of the land grant reserved for the use of said company, now on file in the office of the Commissioner of the General Land-Office, as they may deem most advantageous, and shall cause a plat of their line, as relocated, to be filed in said office within six months of the passage of this act; *Provided*, That the grant of lands heretofore made to aid in the construction of said railroad shall not be increased or changed in any respect whatever by the change of line hereby authorized.

Approved May 23, 1872. (17 Stats., p. 160.)

No. 63.—An Act in relation to the Dakota Southern Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act passed by the legislative assembly of the Territory of Dakota, and approved by the governor on the twenty-first day of April, eighteen hundred and seventy-one, entitled "An act to enable organized counties and townships to vote aid to any railroad, and to provide for the payment of the same" be, and the same is hereby, disapproved and annulled, except in so far as is herein otherwise provided. But the passage of this act shall not invalidate or impair the organization of the company heretofore organized for the construction of the Dakota Southern railroad, leading from Sioux City, Iowa, by way of Yankton, the capital of said Territory, to the west line of Bon Homme county, or any vote that has been or may be given by the counties of Union, Clay, Yankton, and Bon Homme, or any township granting aid to said railroad, or any subscription thereto, or anything authorized by, and that may have been done in pursuance of, the provisions of the aforesaid act of the legislative assembly of said Territory toward the construction and completion of said railroad; and the said Dakota Southern Railroad Company, as organized under and in conformity to the acts of the legislative assembly of said Territory, is hereby recognized and declared to be a legal and valid corporation; and the provisions of the act of said legislative assembly first aforesaid, so far as the same authorize, and for the purpose of validating any vote of aid and subscriptions to said company for the construction, completion, and equipment of the main stem of said railroad, between the termini aforesaid, are hereby declared to be and remain in full force, but no further, and for no other purpose whatsoever.

SEC. 2. That for the purpose of enabling the said Dakota Southern Railroad Company to construct its said road through the public lands between the termini aforesaid, the right of way through the said public lands is hereby granted to said company to the extent of one hundred feet in width on each side of said road: *Provided*, That nothing in this act shall relieve said Dakota Southern Railroad Company from constructing and completing said railroad in accordance with the conditions and stipulations under which the citizens of the counties therein named voted aid to said railroad in accordance with the laws of said Territory, approved April twenty-first, eighteen hundred and seventy-one: *Provided further*, That said Dakota Southern Railroad Company shall issue, to the respective counties and townships voting aid to said railroad, paid up certificates of stock in the same in amounts equal to the sums voted by the respective counties and townships.

Approved, May 27, 1872. (17 Stats., p. 162.)

No. 64.—An Act relating to the Creation of new Land Districts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That hereafter in case of the division of existing land districts by the erection of new ones, or by a change of boundaries by the President of the United States, all business in such original districts shall be entertained and transacted, without prejudice or change, until the offices in the new districts shall be duly opened by public announcement under the direction of the Secretary of the Interior.

SEC. 2. That all sales or disposals of the public lands heretofore regularly made at any land office after the said lands have been made part of another district by any act of Congress, or by any act of the President, are hereby confirmed, provided the same are free from conflict with prior valid rights.

Approved, May 31, 1872. (17 Stats., p. 192).

No. 65.—An Act granting the Right of Way to the Dakota Grand Trunk Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of enabling the Dakota Grand Trunk Railway Company, a corporation organized under the laws of Dakota, to extend its road and branches by the most advantageous and practicable lines, in accordance with its charters, the right of way through the public lands in the Territory of Dakota be, and the same is hereby, granted to said company. Said right of way hereby granted to said company is to the extent of one hundred feet in width on each side of the central line of said road and branches where they may pass over the public lands; and there is also hereby granted to said company all necessary ground, not to exceed twenty acres for each ten miles in length of the main line of said railroad, for station-buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, water-stations, and so forth. And when it may be necessary to use material from the public lands for the construction of said road, it may be done; but no private property shall be taken for the use of said company, in said Territory, except in the manner now provided by the laws thereof relative to the taking of such property for like uses, and in which manner it may be done, with compensation to the owners as therein provided.

SEC. 2. That the said company shall have power to mortgage, in the usual manner, its franchise, road-bed, and all property of every kind belonging to said company, to an amount not exceeding twenty-five thousand dollars per mile for the entire length of said road, upon such terms as may to said company seem best; but in no case shall the United States be liable, in any manner whatever, for any act or thing done by said company.

SEC. 3. That the rights herein granted shall not preclude the construction of other roads through any cañon, defile, or pass on the route of said road.

SEC. 4. That said railway company shall locate the route of said railroad, and file a map of such location within one year in the office of the Secretary of the Interior, and shall complete its railroad within ten

years of the passage of this act; and nothing herein contained shall be construed as recognizing or denying the authority of the legislature of Dakota Territory to create railroad corporations.

SEC 5. That Congress reserves to itself the right to alter, amend, or repeal this act whenever in its judgment the interests of the people may require it.

Approved, June 1, 1872. (17 Stats., p. 202.)

No. 66.—An Act granting [a] Right of Way to the Utah, Idaho, and Montana Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of enabling the Utah, Idaho, and Montana Railroad Company, a corporation organized under the laws of the Territory of Utah, which said organization is hereby legalized and made valid, to build and extend their line by way of Malade River and Snake River Valleys, through Utah, Idaho, and Montana Territories, to a connection with the Northern Pacific Railroad, or with the Helena and Utah Northern Railroad, by the most eligible route, to be selected by said company, the right of way to the extent of one hundred feet in width on each side of the centre of said road, through the public lands, be, and the same is hereby, granted to said company, their successors and assigns, for the construction of a railroad and telegraph from Corinne City, Utah Territory, to the Northern Pacific Railroad, or to said Helena and Northern Utah Railroad, as said company may elect, together with the right to increase their capital stock in proportion to the increased length of their line by resolution of their board of directors, and the filing with the auditor of public accounts of Utah of an additional certificate setting forth said increase, and to take from the public lands adjacent to the line of said road material of earth, stone, timber, and water for the construction and maintenance thereof, and the necessary ground for station-buildings, workshops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations, not exceeding twenty acres for every ten miles of the main line of said road: *Provided,* That no private property shall be taken for the use of said company except in manner prescribed by the laws of Utah Territory, or by section three of an act entitled "An act to amend 'An act to aid in the construction of a railroad and telegraph [line] from the Missouri river to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred sixty-two," approved July second, eighteen hundred and sixty-four.

SEC. 2. That said company shall be, and they are hereby, authorized and empowered to mortgage, in the usual manner, their franchise, road-bed, and all property belonging to said company, to an amount not exceeding thirty thousand dollars per mile for the entire length of said road, upon such terms as may seem to them best; and upon said mortgage may issue mortgage-bonds, not to exceed thirty thousand dollars per mile: *Provided,* That in no case shall the United States be responsible for said bonds.

SEC. 3. That the rights herein granted shall not preclude the construction of other roads through any cañon, defile, or pass on the route of said road; nor shall any thing herein contained be construed as

recognizing or denying the authority of the governor and legislature of Utah Territory to create railroad corporations.

SEC. 4. That said company shall locate said railroad and telegraph line within eighteen months from the passage of this act, and shall complete the same within ten years thereafter, failing in which this act shall be null and void.

SEC. 5. That Congress hereby reserves the right to alter, amend or repeal this act at any time, having due regard to the rights of said company.

Approved, June 1, 1872 (17 Stats., p. 212).

No. 67.—An Act amendatory of an Act entitled "An Act donating public lands to the several States and Territories which may provide Colleges for the Benefit of agricultural and mechanical Arts," passed July second, eighteen hundred and sixty-two, and acts amendatory thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands granted to the State of Oregon, for the establishment of an agricultural college, by act of Congress of July second, eighteen hundred and sixty-two, and acts amendatory thereto, may be selected by said State from any lands within said State subject to homestead or pre-emption entry under the laws of the United States; and in any case where land is selected by the State, the price of which is fixed by law at the double minimum of two dollars and fifty cents per acre, such land shall be counted as double the quantity toward satisfying the grant.

SEC. 2. That any such selections already made by said State, and the lists duly filed in the proper district land-office, be, and the same are hereby, confirmed, except so far as they may conflict with any adverse legal right existing at the passage of this act: *Provided, however,* That the State shall not receive more than ninety thousand acres, the quantity granted by the act of July second, eighteen hundred and sixty-two: *Provided, also,* That such lands shall not be sold by said State for less than two dollars and fifty cents per acre; and where settlement is made upon the same, preference in all cases shall be given to actual settlers at the price for which said lands may be offered.

Approved, June 4, 1872. (17 Stats., p. 217.)

No. 68.—An Act supplementary to an Act entitled "An Act to aid in the Construction of Telegraph Lines, and to secure to the Government the Use of the same for postal, military, and other Purposes," approved July twenty-fourth, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the International Ocean Telegraph Company shall have the right to pre-empt and use public lands at the following stations in Florida on the line of telegraph belonging to said telegraph company, to wit: at the two ends of the cables on the Sinabel Island, the station at Punta Rasa, near the mouth of the Caloosahatchie river, the station at Fort Myers, the points where the line of telegraph crosses the Caloosah[a]tchie river, the station at Pine Island, and the stations at Branch river, Bartow, and Tuckertown, each forty acres; such lands being public lands, and now actually used

by the International Ocean Telegraph Company of the State of New York: *Provided*, That whenever any one of the smallest legal subdivisions at any one of the stations designated is less than forty acres, by reason of the land lying adjacent to the Gulf of Mexico, or any bay or river, the said company shall pre-empt only such smallest fractional subdivision upon which the buildings and offices of the company are located.

Approved, June 4, 1872. (17 Stats., p. 219.)

No. 69.—An Act granting the Right of Way through the public Lands for the construction of a Railroad and Telegraph in Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the Great Southern Railway Company, a corporation created under the laws of the State of Florida, its successors and assigns, for the construction of a railroad and telegraph from the Saint Mary's river, in the State of Florida, to Key West, in said State, together with a branch road from the most eligible point on said road to Tampa Bay and Caloosa Entrance, in said State; and the right, power, and authority are hereby given to said corporation to take, from the public lands adjacent to the line of said road, materials for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of the central line of said road where it may pass through the public domain, including grounds for station-buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations, to an amount not exceeding twenty acres for each ten miles in length of the main line of said railroad: *Provided*, That within one year from the passage of this act the said company shall file with the Secretary of the Interior its acceptance of the terms of this act, and a map of the route, exhibiting the line of the road and its branch, as the same has been located, and shall complete said road within ten years of the passage of this act. It shall be the duty of the said company to permit any other railroad which has been or shall be authorized by the United States, or by the State of Florida, to form running connections with its road on fair and equitable terms. In case of disagreement, such terms shall be fixed by the Secretary of the Interior.

SEC. [2.] That said road shall be a post route and a military road; and Congress at any time, having due regard for the rights of said company, may fix rates of tariff for transportation of troops, materials of war, and mails, and may add to, alter, or amend this act.

SEC. 3. That Congress reserves *it* [to] itself the right to alter, amend, or repeal this act whenever in its judgment the interests of the people may require it.

Approved, June 4, 1872. (17 Stats., p. 224.)

No. 70.—An Act to provide for the Removal of the Flathead and other Indians from the Bitter Root Valley, in the Territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be the

duty of the President, as soon as practicable, to remove the Flathead Indians, (whether of full or mixed bloods,) and all other Indians connected with said tribe, and recognized as members thereof, from Bitter Root valley, in the Territory of Montana, to the general reservation in said Territory, (commonly known as the Jocko reservation,) which by a treaty concluded at Hell Gate, in the Bitter Root valley, July sixteenth, eighteen hundred and fifty-five, and ratified by the Senate March eighth, eighteen hundred and fifty-nine, between the United States and the confederated tribes of Flathead, Kootenai, and Pend d'Oreille Indians, was set apart and reserved for the use and occupation of said confederated tribes.

SEC 2. That as soon as practicable after the passage of this act, the surveyor-general of Montana Territory shall cause to be surveyed, as other public lands of the United States are surveyed, the lands in the Bitter Root valley lying above the Lo-lo fork of the Bitter Root river; and said lands shall be open to settlement, and shall be sold in legal subdivisions to actual settlers only, the same being citizens of the United States, or having duly declared their intention to become such citizens, said settlers being heads of families, or over twenty-one years of age, in quantities not exceeding one hundred and sixty acres to each settler, at the price of one dollar and twenty-five cents per acre, payment to be made in cash within twenty one months from the date of settlement, or of the passage of this act. The sixteenth and thirty-sixth sections of said lands shall be reserved for school purposes in the manner provided by law. Town-sites in said valley may be reserved and entered as provided by law: *Provided*, That no more than fifteen townships of the lands so surveyed shall be deemed to be subject to the provisions of this act: *And provided further*, That none of the lands in said valley above the Lo-lo fork shall be open to settlement under the homestead and pre-emption laws of the United States. An account shall be kept by the Secretary of the Interior of the proceeds of said lands, and out of the first moneys arising therefrom there shall be reserved and set apart for the use of said Indians the sum of fifty thousand dollars, to be by the President expended, in annual installments, in such manner as in his judgment shall be for the best good of said Indians, but no more than five thousand dollars shall be expended in any one year.

SEC. 3. That any of said Indians, being the head of a family, or twenty-one years of age, who shall, at the passage of this act, be actually residing upon and cultivating any portion of said lands, shall be permitted to remain in said valley and pre-empt without cost the land so occupied and cultivated, not exceeding in amount one hundred and sixty acres for each of such Indians, for which he shall receive a patent without power of alienation: *Provided*, That such Indian shall, prior to August first, eighteen hundred and seventy-two, notify the superintendent of Indian affairs for Montana Territory that he abandons his tribal relations with said tribe, and intends to remain in said valley: *And provided further*, That said superintendent shall have given such Indian at least one month's notice prior to the date last above mentioned of the provisions of this act and of his right so to remain as provided in this section of this act.

SEC 4. That in case John Owen, an actual settler in said valley, above the Lo-Lo fork, shall come within the provisions of the act of Congress of September twenty-seventh, eighteen hundred and fifty, entitled "An act to create the office of surveyor-general of the public

lands in Oregon, and to provide for the survey, and to make donations to settlers of the said public lands," and the acts amendatory thereof, he shall be permitted to establish such fact in the land-office in the said Territory of Montana, and, upon proof of compliance with the provisions of said act or acts, shall be permitted to obtain title, in the manner provided therein, to such quantity of land as he may be entitled to under the same. All disputes as to title to any lands mentioned in this act shall be decided according to the rules governing the decision of disputes in ordinary cases under the pre-emption laws of the United States.

Approved, June 5, 1872. (17 Stats., p. 226.) See No. 102 and Title X., Nos. 569, 570.

No. 71.—An Act to carry into Effect the fourth Article of the Treaty of February twenty-three, eighteen hundred and sixty-seven, with the Seneca, Shawnee, Quapaw, and other Indians.

WHEREAS, by the fourth article of the treaty of February twenty-third, eighteen hundred and sixty-seven, with the Shawnee, Quapaw, and other Indians, the strip of lands belonging to said Quapaws lying within the State of Kansas was sold to the United States, and intended, by the amendment to said article, to be sold to actual settlers, under the pre-emption laws of the United States; but whereas, by the manner of insertion of said amendment, the said lands are left without any provisions for their disposal: Therefore, for the purpose of carrying out the intention of the treaty and of its amendments,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said amendment shall not be construed as authorizing or providing for the disposal of the lands of the said Quapaw Indians, which, by the fourth article of the said treaty of February twenty-third, eighteen hundred and sixty-seven, were sold to the United States at one dollar and fifteen cents an acre, and lying and being within the boundary of the Indian Territory, but said amendment shall refer to, and be construed to authorize and direct, the disposal of the strip of land theretofore belonging to said Indians, lying and being within the State of Kansas, and which, by the aforesaid article of said treaty, *were* [was] sold to the United States for one dollar and twenty-five cents an acre.

SEC. 2. That the said strip of land within the State of Kansas, so ceded to the United States by the said Quapaw band of Indians, be, and the same is hereby, declared open to entry and pre-emption, under the pre-emption laws of the United States, at the price of one dollar and twenty-five cents an acre, excepting therefrom one half-section, to be patented to Samuel G. Vallier, including his improvements, as provided in the fourth article of said treaty; and all such pre-emptions shall be paid for in the lawful money of the United States, at the proper land office of the United States, within one year from the date of settlement, or where settlement was made before the passage of this act, then within one year from the passage of the same: *Provided*, That in case any settler has entered upon and improved a single tract, not exceeding one hundred and sixty acres, a part of which is embraced in said Quapaw strip, and a part on the government strip, so called, his entry of the part on the government strip, under the pre-emption

laws, shall not prevent the entry of the remainder of his tract upon said Quapaw lands, in the State of Kansas, under this act.

Approved, June 5, 1872. (17 Stats., p. 228.)

No. 72—An Act granting the Right of Way through the public Lands to the Jacksonville and Saint Augustine Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there is hereby granted to the Jacksonville and Saint Augustine Railroad Company, the same being a corporation existing under the laws of the State of Florida, the right of way through the public lands of the United States between Jacksonville and Saint Augustine, for one hundred feet in width on each side of the track of said railroad and of any of its branches, with the right to take from said lands, or from any of the public lands adjacent thereto, stone, timber, earth, or other material, to be used in the construction and repair of said railroad; and said company shall also have the right to enter upon any of the public lands or lots of land, the property of the United States, and take the same for depots, shops, side-tracks, or other necessary uses of said railroad: Provided, That no lot or tract of land so taken shall exceed forty acres in any one place. No military reservation shall be crossed or appropriated unless the consent of the Secretary of War be first obtained, and then only under such restrictions as he shall establish. Said road shall be a postal and military road, and Congress shall have the right to alter, amend, or repeal this act as shall in its discretion be deemed best.

Approved, June 7, 1872. (17 Stats., p. 280.)

No. 73.—An Act to amend an Act relating to Soldiers' and Sailors' Homesteads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to enable honorably discharged soldiers and sailors, their widows and orphan children, to acquire homesteads on the public lands of the United States," approved April fourth, eighteen hundred and seventy-two, be, and the same is hereby, amended so as to read as follows: [Embraced in section, 2304 to 2309, inclusive of the Revised Statutes.]

Approved, June 8, 1872. (17 Stats., p. 333.) See No. 49 and Title II., Nos. 314 to 340.

No. 74.—An Act relating to Homestead Settlers burned out in the States of Minnesota, Wisconsin, and Michigan.

WHEREAS, fires in extent unparalleled in the history of the country burned through the newly settled parts of the States of Minnesota, Wisconsin, and Michigan, during the autumn of the year eighteen hundred and seventy-one, whereby many homestead settlers lost their dwellings and all their personal property, and many were burned to death, and many others were so much burned as to disable them from

labor for the present winter, and are unable to rebuild and occupy their lands within a period of six months after said fires had driven them from their homestead, therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all such persons occupying homestead claims under the laws of the United States, on lands of the United States, who were burned out, and the heirs of such persons who were burned to death in the year eighteen hundred and seventy-one, in the States of Minnesota, Wisconsin, and Michigan, shall have until the first day of January, anno Domini eighteen hundred and seventy-three, to rebuild on and re-occupy said homestead lands; and that when said homestead claimants shall prove up their claims, such period of time until the first day of January, eighteen hundred and seventy-three, shall be included in the five years' time which they are required by law to reside on said lands, in the same manner as if such homestead claimant had actually resided thereon during said period of time.

SEC. 2. That in all cases where the person having a homestead claim under the laws of the United States, in said States of Minnesota, Wisconsin, and Michigan, shall have been burned to death or perished from the effects of such fires, it shall be lawful for the heirs or the guardian of any children which may have survived said fires, or the administrator of the estate of said deceased homestead claimant, to prove up said claim before the register of the land office of the proper district, and upon proof of the occupation and residence of such homestead claimant, up to the period of so being burned out, a patent shall be issued to said heir or heirs, or guardian for the use of such heir, or administrator for the use of such estate, in the same manner as if such homestead claimant had resided thereon for five years.

Approved, June 8, 1872. (17 Stats., p. 337.)

No. 75.—An Act granting the Right of Way through the public Lands to the Denver and Rio Grande Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way over the public domain, one hundred feet in width on each side of the track, together with such public lands adjacent thereto as may be needed for depots, shops, and other buildings for railroad purposes, and for yard-room and side-tracks, not exceeding twenty acres at any one station, and not more than one station in every ten miles, and the right to take from the public lands adjacent thereto stone, timber, earth, water, and other material required for the construction and repair of its railway and telegraph line be, and the same are hereby, granted and confirmed unto the Denver and Rio Grande Railway Company, a corporation created under the incorporation laws of the Territory of Colorado, its successors and assigns; and all the rights, powers, and franchises conferred by the said laws on corporations created under them for constructing and operating railroad and telegraph lines are hereby ratified and confirmed to the above-named railway company, its successors and assigns; and the same rights, powers, and franchises conferred by the general incorporation laws of the Territory of Colorado for the construction of railroads and telegraph lines, are hereby granted to the said

company, its successors and assigns, for the extension and operation of its railway and telegraph line in and through any contiguous territory of the United States to the northern boundary line of Mexico, subject to the compliance with the conditions and requirements of the general incorporation laws of such territory so far as the same are applicable and not inconsistent with the laws of the United States; and the same rights, powers, and privileges conferred upon the Union Pacific Railroad Company by section three of an act approved July second, eighteen hundred and sixty-four, are hereby conferred upon the above-named company, its successors and assigns: *Provided*, That applications for the assessment of damages shall be made to the court, or any judge of a court having jurisdiction in the county in which the lands or premises lie: *Provided*, That said company shall complete its railway to a point on the Rio Grande as far south as Santa Fé within five years of the passage of this act, and shall complete fifty miles additional south of said point in each year thereafter, and in default thereof, the rights and privileges herein granted shall be rendered null and void so far as respects the unfinished portion of said road: *And provided further*, That nothing in this act contained shall be construed as affirming or denying the right of any territory to incorporate a railroad company.

Approved, June 8, 1872. (17 Stats., p. 339.) See No 144.

No. 76.—An Act to perfect [perfect] certain Land-titles therein described.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior be, and he is hereby, authorized to permit the purchase, with cash or military bounty-land warrants, of such lands as may have been located with claims arising under the seventh clause of the second article of the treaty of September thirtieth, eighteen hundred and fifty-four, at such price per acre as the Secretary of the Interior shall deem equitable and proper, but not at a less price than one dollar and twenty-five cents per acre, and that owners and holders of such claims in good faith be also permitted to complete their entries, and to perfect their titles under such claims upon compliance with the terms above mentioned: *Provided*, That it shall be shown to the satisfaction of the Secretary of the Interior that said claims are held by innocent parties in good faith, and that the locations made under such claims have been made in good faith and by innocent holders of the same.

Approved, June 8, 1872. (17 Stats., p. 340.)

No. 77.—An Act granting the Right of Way through public Lands to the Pensacola and Louisville Railroad Company of Alabama.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the Pensacola and Louisville Railroad Company of Alabama, for the construction of a railroad. And the right is hereby granted to said corporation to take, from the public lands adjacent to the line of said road, material for the construction of said road. Said way is granted to said company to the extent of one hundred feet on each side of said road where it may

pass through the public lands; also the necessary lands for stations, buildings, depots, workshops, machine-shops, side-tracks, switches, turntables, and water-stations, not to exceed forty acres in any place. The acceptance of the provisions of this act by the said company, and a map of the location of the road, and the lands to be reserved for buildings and uses of said road, shall be filed with the Secretary of the Interior, within one year from the passage of this act; and the road shall be finished within five years from the passage of this act. Said road shall be a post and military road, and shall have the power of making running connections for the transportation of mails, military and naval supplies, passengers, and freights of all kinds, and the running of freight-cars without the breaking of bulk, whenever the interests of the public and of the commerce between the States will be advanced thereby, with any other road which has heretofore received, or may hereafter receive, aid from the United States for the construction thereof, on fair and equitable terms, and pro rata between the roads, in proportion to the length of the several roads; and in the event of a disagreement between the said road and any other road having so received aid from the United States for the construction thereof, and connecting with the said Pensacola and Louisville railroad, then the Secretary of the Interior shall establish such rates for the transportation of mails, freights, and passengers, and running connections as are herein provided for, and also establish such regulations as may be requisite for the enforcement of the provisions of this act. Congress shall, in its discretion, have the power to alter, amend, or repeal this act. Nothing in this act shall be so construed as to invalidate the claim of any actual pre-emption or homestead settlers.

Approved, June 8, 1872. (17 Stats., p. 340.)

No. 78.—An Act to authorize the building of the New Mexico and Gulf Railway, and for other Purposes.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the New Mexico and Gulf Railway Company have, and there is hereby granted to them, their successors and assigns, a strip of land one hundred feet wide on each side of the centre line of a railway route extending from the north-western boundary of New Mexico, as near as practicable to the junction of the San Juan with the Rio Mancos, through Santa Fé county, and down the Pecos river valley to the passage of said Pecos river into the State of Texas, at or near the thirty-second parallel, upon a route to be surveyed and designated by a competent engineer, as a right of way, together with the necessary lands for depots, stations, side-tracks, and other needful uses in operating said road and a telegraph line, not exceeding twenty acres at any one place: *Provided*, That the location for depots, stations and side-tracks shall not exceed for the whole line of said road more than one location of twenty acres for every ten miles of the same, and when made upon surveyed lands shall conform to government surveys.*

SEC. 2. That said company shall, within six months after the location of any section of twenty miles or more of their said road, if the same be upon surveyed land, and if upon unsurveyed land, then within six months after the survey thereof by the United States, file a plat of such

located section, together with proof thereof, with a register of the land-office for the district wherein said located section may be situated, and upon approval thereof the same shall be noted upon the township plats in said office, and thereafter all lands over which the said line of road shall pass shall be sold, located, or disposed of by the United States, subject to such right of way so located as aforesaid: *Provided*, That the line of said road shall be located within one year after the passage of this act: *And provided further*, That said road shall be completed within ten years thereafter: *And provided also*, That when the route of said road shall pass through lands other than those of the United States, or when it may be necessary for said railroad company to take any lands other than those of the United States for any of the purposes herein mentioned, necessary to said right of way, such right of way through or title to such lands shall be secured in accordance with the laws of the State or Territory in which they may be situated: *Provided also*, That the right herein granted shall not preclude the construction of other roads through any cañon, defile or pass on said route.

SEC. 3. That nothing herein shall be construed as affirming or denying the power of a Territory to incorporate a railroad company.

SEC. 4. That Congress reserves to itself the right to alter, amend, or repeal this act, whenever in its judgment the interest of the people shall require it.

Approved, June 8, 1872. (17 Stats., p. 343.)

No. 79.—An Act to extend the Provisions of an Act entitled "An Act for the final Adjustment of private Land-claims in the States of Florida, Louisiana, and Missouri, and for other Purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act entitled "An act for the final adjustment of private land-claims in the States of Florida, Louisiana, and Missouri, and for other purposes," approved June twenty-second, eighteen hundred and sixty, be, and the same are hereby, extended, and the same shall continue in force for a period of three years from and after the passage of this act.

SEC. 2. That all persons claiming land as specified in the first section of said act may have their claims confirmed, in accordance with the forms and in the manner prescribed in said act, in all cases where it shall be satisfactorily proved that the claimants, and those from whom they derive title, have held continuous possession of the land claimed, from the date of the cession to the United States of the territory out of which the States of Florida, Louisiana, and Missouri were formed.

Approved, June 10, 1872. (17 Stats., p. 378.) See Title VI., No. 473.

No. 80.—An Act for the Restoration to Market of certain Lands in Michigan.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands remaining undisposed of in the reservation made for the Ottawa and Chippewa Indians of Michigan by the treaty of July thirty-first, eighteen hundred and fifty-five, shall be restored to market by proper notice, under direction of the Secretary of the Interior, as hereinafter provided.

SEC. 2. That said unoccupied lands shall be open to homestead entry for six months from the passage of this act by Indians only of said tribes who shall have not made selections or purchases under said treaty, including such members of said tribes as have become of age since the expiration of the ten years named in the treaty; and any Indian so entitled shall be permitted to make his homestead entry at the local office within the six months aforesaid of not exceeding one hundred and sixty acres, or one quarter section of minimum, or eighty acres of double minimum land, on making proper proof of his right under such rules as may be prescribed by the Secretary of the Interior: *Provided*, That the collector of customs for the district in which said land is situated is hereby authorized, and it is made his duty to select for such minor children as would be entitled under this law as heirs of any Indian.

SEC. 3. That all actual, permanent, bona fide settlers on any of said lands who settled prior to the first day of January, eighteen hundred and seventy-two, shall be entitled to enter either under the homestead laws or to pay for at the minimum or double minimum price, as the case may be, not exceeding one hundred and sixty acres of the former or eighty acres of the latter class of land on making proof of his settlement and continued residence before the expiration of six months from the passage of this act.

SEC. 4. That all selections by Indians heretofore made and regularly reported and recognized as valid and proper by the Secretary of the Interior and commissioner of Indian affairs, shall be patented to the respective Indians making the same; and all sales heretofore made and reported where the same are regular and not in conflict with such selections, or with any other valid adverse right, except of the United States, are hereby confirmed, and patents shall issue thereon as in other cases according to law.

SEC. 5. That immediately after the expiration of said six months, the Secretary shall proceed to restore the remaining lands to market by public notice of not less than thirty days, and after such restoration they shall be subject to the general laws governing the disposition of the public lands of the United States: *Provided*, That none of the lands herein mentioned shall be subject to or taken under any grant of lands for public works or improvements, or by any railroad company.

Approved, June 10, 1872. (17 Stats., p. 381.) See No. 141 and Title X., Nos. 564, 565.

No. 81.—An Act to grant the Right of Way through the public Lands to the Eastern Nevada Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding the Eastern Nevada Railroad Company, the same being a corporation organized under the laws of the State of Nevada, to construct and operate a railroad from the town of Elko to the town of Hamilton city, all in Nevada, the right of way through the public lands be, and the same is, hereby, granted to said Eastern Nevada Railroad Company, its successors and assigns, for the construction of a railroad as proposed; and the right is hereby given to said corporation to take from the public lands adjacent to the line of said road

material for the construction thereof. Said way is granted to said railroad to the extent of one hundred feet in width on each side of said road where it may pass through the public domain; also, all necessary ground for station buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, and water stations, not to exceed twenty acres, not mineral lands, for each ten miles of the entire length of said road: *Provided*, That the right herein granted shall not preclude the construction of other roads through any cañon, defile, or pass.

SEC. 2. That the acceptance of this act by the said Eastern Nevada Railroad Company shall be signified in writing, under the corporate seal of said company, duly executed pursuant to the direction of its board of directors, first had and obtained, which acceptance shall be made within one year after the passage of this act, and not afterward, and shall be deposited with the Secretary of the Interior; and within the same period the said company shall also file with said Secretary of the Interior a map of the definite location of the entire line of the road, and the said secretary shall thereupon take the requisite steps, by withdrawal or otherwise, to protect said right of way: *Provided, however*, That the entire line of said road, in manner in accordance with its charter, shall be fully completed within two years from date of approval of this act, or in default thereof, the right of way hereby granted shall be forfeited and revert to the United States.

Approved, June 10, 1872. (17 Stats., p. 393.)

No. 82.—An Act to authorize the Issuance of College Scrip to the State of Arkansas, and for other Purposes.

WHEREAS the State of Arkansas has complied with all the provisions and requirements of an act entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two, and other acts amendatory thereto: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Department of the Interior be, and he is hereby, authorized and directed to issue at once, and deliver to the Secretary of the State of Arkansas, the full amount of college scrip, to wit, one hundred and fifty thousand acres, and ninety thousand acres to the Secretary of the Board of Trustees of the Florida State Agricultural College of the State of Florida, as provided for in said act, to be used and appropriated to and for the purposes and objects in said act specified, and none other: *Provided*, That no scrip as aforesaid shall be delivered to the authorities of the State of Arkansas until said State shall have made some satisfactory arrangement by which the bonds of said State, principal and interest, now held by the United States as Indian trust funds, shall be funded in new bonds authorized to be issued by said State for this purpose.

SEC. 2. That the time within which the State of Indiana may comply with the provisions of the act of July twenty-third, eighteen hundred and sixty-six, entitled "An act to amend the fifth section of an act entitled 'An act donating public lands to the several States and Terri-

teries which may provide colleges for the benefit of agriculture and the mechanic arts,' approved July second, eighteen hundred and sixty-two, so as to extend the time within which the provisions of said act shall be accepted and such colleges established," is hereby extended so that the State of Indiana shall have the period of two years after the first day of July, eighteen hundred and seventy-two, within which to provide at least one college, as described in the fourth section of an act entitled "An act donating public land to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two.

Approved, December 13, 1872. (17 Stats., p. 397.) See No. 84.

No. 83.—An Act to quiet the Title to certain Lands in the State of Missouri. WHEREAS by an act of the Congress of the United States, approved on the twenty-eighth day of September, eighteen hundred and fifty, the State of Missouri, with other States, acquired title to all swamp and overflowed lands within their limits; that the State of Missouri by an act of its general assembly, approved February twenty-third, eighteen hundred and fifty-three, passed the title thus acquired to the several counties in which said lands were situated, for the purpose and to the end that the same should be drained and reclaimed as provided by said act of Congress; and that after the donation as aforesaid a commissioner was appointed, charged with the duty to select and locate such swamp-lands, who did make such selections and locations in said county of Scott. and State of Missouri, making due report of the same, which report was, by proper authority, approved, and the lands so located patented by the government of the United States to the State of Missouri, and, on the twenty-ninth day of April, eighteen hundred and seventy, by said State to said county of Scott: and whereas said commissioner, in his report, described other lands situated in said county as unsurveyed swamp-lands, and that in the year eighteen hundred and sixty said lands were ordered to be surveyed by the general government, which survey was approved by the surveyor general of Missouri on the second day of July, eighteen hundred and sixty-one, and that by act of Congress approved March the twelfth, eighteen hundred and sixty, said county was given two years in which to present its claim and make proof to its title to said lands, which could not be done, owing to the existence of civil war then afflicting the people of said county: and whereas said county, believing further time would be given to make said claim and proof, did sell to actual settlers the greater portion of said lands, which purchasers, relying on said title, have made, in many instances, permanent and valuable improvements: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the lands above referred to be, and the same are hereby, granted to the county of Scott, in the State of Missouri, which lands, in the aggregate, amount to four thousand four hundred and ten and seventy-one hundredths acres, and described as follows: Parts of sections one, two, three, eleven, twelve, thirteen, twenty-four, and twenty-five, all in township number twenty-seven, range twelve: *Provided,* That nothing in this act shall prejudice

the rights of any homestead or other entry made, by any person whatsoever, under the laws of the United States on said lands.

Approved, December 27, 1872. (17 Stats., p. 404). See No. 233.

No. 84.—An Act to amend an Act entitled "An Act to amend the fifth Section of an Act entitled 'An Act donating public Lands to the several States and Territories which may provide Colleges for the Benefit of Agriculture and the mechanic Arts,' approved July second, eighteen hundred and sixty-two, so as to extend the Time within which the Provisions of said Act shall be accepted and such Colleges established," approved July twenty-third, eighteen hundred and sixty-six.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time within which the several States may comply with the provisions of the act of July twenty-third, eighteen hundred and sixty-six, entitled "An act to amend the fifth section of an act entitled 'An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts,' approved July second, eighteen hundred and sixty-two, so as to extend the time within which the provisions of said act shall be accepted and such colleges established," is hereby extended so that the States which have not complied with the provisions of said acts in establishing colleges shall have the period of two years, after the first day of July, eighteen hundred and seventy-two, within which to provide at least one college, as described in the fourth section of an act entitled "An act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts," approved July second, eighteen hundred and sixty-two.

Approved, January 23, 1873. (17 Stats., p. 416.)

No. 85.—An Act authorizing the Removal of Restrictions upon the Alienation of certain Miami Indian Lands in the State of Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the legislature of the State of Kansas is hereby authorized to remove the restrictions against the liability to leases, alienation, levy, sale, execution, taxation, and forfeiture of lands in said State, patented under and in pursuance of the second article of the treaty of June fifth, eighteen hundred and fifty-four, between the Miami Indians and the United States, in all cases in which the title has legally passed to citizens of the United States other than Indians. And Congress hereby assents to the removal of said restrictions as provided by the joint resolution of Kansas, approved March first, eighteen hundred and seventy-two, subject to the provisions of this act.

Approved, January 23, 1873. (17 Stats., p. 417.)

No. 86.—An Act to quiet the Title to certain Lands in the State of Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the title to the

lands in the State of Iowa heretofore approved and certified by the Department of the Interior for railroad purposes, to aid in the construction of a railroad from the city of Davenport, via Iowa city, to Council Bluffs, under the grants made by Congress, according to the adjustments thereof made at the General Land-Office, be, and the same is hereby, confirmed to the Mississippi and Missouri Railroad Company and the Chicago, Rock Island and Pacific Railroad Company, and their assigns, they being the corporations to whom said lands were certified: *Provided*, That this act shall be construed as conveying only any reversionary or other interest which the United States may have in said lands, and all lands settled upon in good faith and now occupied by homestead or pre-emption settlers shall be excluded from the operations of this act.

J. G. BLAINE,

Speaker of the House of Representatives.

SCHUYLER COLFAX,

Vice-President of the United States and President of the Senate.

Received by the President January 20, 1873. (Law from January 31, 1873.)

[NOTE BY THE DEPARTMENT OF STATE.—The foregoing act having been presented to the President of the United States for his approval, and not having been returned by him to the House of Congress in which it originated within the time prescribed by the Constitution of the United States, has become a law without his approval.] (17 Stats., p. 421.)

No. 87.—An Act to confirm certain Entries of Lands therein named.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all entries of public lands under the act to graduate and reduce the price of the public lands subject to entry to actual settlers and cultivators, approved the fourth day of August, eighteen hundred and fifty-four; made prior to the passage of this act, in which the purchaser has made the affidavit and paid, or tendered, the purchase money as required by said act, and the instructions issued and in force, and in the hands of the register at the time of making said entry, are hereby legalized, and patents shall issue to the parties, respectively, provided that in case of tender the money shall be paid, excepting those entries under said act which the Commissioner of the General Land-Office may ascertain to have been fraudulently or evasively made: *Provided*, That this act shall not be so construed as to confirm any of said entries which have heretofore been annulled and vacated by said Commissioner on account of fraud, evasion of law, or other special cause: *And provided further*, That nothing herein contained shall be so construed as to deprive any actual settler and cultivator of his right to any land on which he resided at the time of an entry by another person under the act to which this is an amendment.

Approved, February 17, 1873. (17 Stats., p. 464.) Title XVI., No. 625.

No. 88.—An Act in Relation to Mineral Lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That within the States hereinafter named deposits or mines of iron and coal be, and they are hereby, excluded from the operations of an act entitled "An act to promote the development of the mining resources of the United States," approved May tenth eighteen hundred and seventy-two, and said act shall not apply to the mineral lands situate and being within the States of Michigan, Wisconsin, and Minnesota, and that said lands are hereby declared free and open to exploration and purchase, according to the legal subdivisions thereof, as before the passage of said act; and that any bona-fide entries of such lands within said States, since the passage thereof, may be patented without reference to the provisions of said act.

Approved, February 18, 1873. (17 Stats., p. 465).

No. 89.—An Act to provide for the Sale of Certain New York Indian Lands in Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That those persons being heads of families or single persons over twenty-one years of age who have made settlement and improvement upon, and are bona-fide claimants of, and occupants of, either in person or by tenants, the lands in Kansas which were allotted to certain New York Indians, and for which certificates of allotment, dated the fourteenth day of September, eighteen hundred and sixty, for three hundred and twenty acres of land each were issued to thirty-two of said Indians, shall be, and hereby are authorized and permitted to enter and purchase at the proper land-office said lands so occupied by them, in tracts not exceeding one hundred and sixty acres, according to the government surveys, on paying therefor in lawful money of the United States the appraised value of said tracts respectively, to be ascertained by three disinterested and competent appraisers, to be appointed by the Secretary of the Interior, who shall examine in person each tract and report under oath its value, exclusive of improvements; and patents shall issue to them therefor as in other cases, but no sale shall be made under this act for less than three dollars and seventy-five cents per acre; and the Secretary of the Interior shall prescribe such regulations as may be necessary to carry this act into effect according to the intent thereof, and such entries shall be made within two years from the time such regulations shall be promulgated, and the moneys that shall arise from such sales shall be paid into the treasury of the United States, in trust for, and to be paid to, said Indians respectively, to whom said certificates were issued, or to their heirs, upon satisfactory proof of their identity to the Secretary of the Interior, at any time within five years from the passage of this act; and in case such proof is not made within the time specified, then the proceeds of such sales, or so much thereof as shall not have been paid under the provisions of this act, shall become a part of the public moneys of the United States: *Provided,* That any Indian to whom any of said certificates was issued, and who is now occupying the land allotted thereby, shall be entitled to receive a patent therefor.

Approved, February 19, 1873. (17 Stats., p. 466.)

No. 90.—An Act for the Relief of Settlers on the late Sioux Indian Reservation, in the State of Minnesota.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all actual settlers who have duly filed their declaratory statements under the pre-emption laws, with the register of the proper local land-office, upon the unsold lands now included within the limits of the late Sioux Indian reservation in the State of Minnesota, shall be allowed until the first day of March, anno Domini, eighteen hundred and seventy-four, in which to make proof and payment for their claims.

Approved, February 24, 1873. (17 Stats., p. 475.) (See Nos. 70, 205.)

No. 91.—An Act to authorize Pre-emptors or Settlers upon Homesteads on the public Land to alienate Portions of their Pre-emptions or Homesteads for certain public Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who has already settled or hereafter may settle on the public lands of the United States, either by pre-emption, or by virtue of the homestead law or any amendments thereto, shall have the right to transfer by warranty, against his or her own acts, any portion of his or her said pre-emption or homestead for church, cemetery, or school purposes, or for the right of way of railroads across such pre-emption or homestead, and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to their pre-emptions or homesteads.

Approved, March 3, 1873. (17 Stats., p. 602.)

No. 92.—An Act to encourage the Growth of Timber on western Prairies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who shall plant, protect, and keep in a healthy, growing condition for ten years forty acres of timber, the trees thereon not being more than twelve feet apart each way on any quarter-section of any of the public lands of the United States shall be entitled to a patent for the whole of said quarter-section at the expiration of said ten years, on making proof of such fact by not less than two credible witnesses; *Provided,* That only one quarter in any section shall be thus granted.

SEC. 2. That the person applying for the benefit of this act shall, upon application to the register of the land-office in which he or she is about to make such entry, make affidavit before said register or receiver that said entry is made for the cultivation of timber, and upon filing said affidavit with said register and receiver, and on payment of ten dollars he or she shall thereupon be permitted to enter the quantity of land specified: *Provided however,* That no certificate shall be given or patent issue therefor until the expiration of at least ten years from the date of such entry; and if at the expiration of such time, or at any time within three years thereafter, the person making such entry, or if he or she be dead, his or her heirs or legal representatives, shall prove by

two credible witnesses that he, she, or they have planted, and for not less than ten years have cultivated and protected such quantity and character of timber as aforesaid, they shall receive the patent for such quarter-section of land.

SEC. 3. That if at any time after the filing of said affidavit, and prior to the issuing of the patent for said land, it shall be proven after due notice to the party making such entry and claiming to cultivate such timber, to the satisfaction of the register of the land-office that such person has abandoned or failed to cultivate, protect and keep in good condition such timber, then, and in that event, said land shall revert to the United States.

SEC. 4. That each and every person who, under the provisions of an act entitled "An act to secure homesteads to actual settlers on the public domain" approved May twentieth, eighteen hundred and sixty-two, or any amendment thereto, having a homestead on said public domain, who, at the end of the third year of his or her residence thereon, shall have had under cultivation, for two years, one acre of timber, the trees thereon not being more than twelve feet apart each way, and in a good thrifty condition, for each and every sixteen acres of said homestead, shall upon due proof of said fact by two credible witnesses receive his or her patent for said homestead.

SEC. 5. That no land acquired under provisions of this act shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of patent therefor.

SEC. 6. That the Commissioner of the General Land-Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land-offices shall be entitled to receive the same compensation for any lands entered under the provisions of this that they are now entitled to receive when the same quantity of land is entered with money.

SEC. 7. That the fifth section of the act entitled "An act in addition to an act to punish crimes against the United States, and for other purposes" approved March third, eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

Approved, March 3, 1873. (17 Stats., p. 605.) See No. 103, Act of March 13, 1874, and Title VII., Nos. 502 to 519, 526.

No. 93.—An Act to amend an Act entitled "An Act to enable honorably discharged Soldiers and Sailors, their Widows and orphan Children, to acquire Homesteads on the public Lands of the United States," and the Amendments thereto.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two of the act entitled "An act to amend an act relating to soldiers' and sailors' homesteads," approved June eighth, eighteen hundred and seventy-two, be amended so as to read as follows: That any person entitled under the provisions of the foregoing sections to enter a homestead, who may have heretofore entered under the homestead laws a quantity of land less than one hundred and sixty acres, shall be permitted to enter so

much land as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres.

Approved, March 3, 1873. (17 Stats., p. 605.) See Title II., Nos. 334 to 340.

No. 94.—An Act to provide for the sale of the Lands of the United States containing Coal.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person above the age of twenty-one years, who is a citizen of the United States, or who has declared his intention to become such, or any association of persons severally qualified as above, shall, upon application to the register of the proper land-office, have the right to enter by legal subdivisions, any quantity of vacant coal lands of the United States, not otherwise appropriated or reserved by competent authority, not exceeding one hundred and sixty acres to such individual person, or three hundred and twenty acres to such association, upon payment to the receiver of not less than ten dollars per acre for such lands, where the same shall be situated more than fifteen miles from any completed railroad, and not less than twenty dollars per acre for such lands as shall be within fifteen miles of such road.

SEC. 2. That any person or association of persons severally qualified as above, who have opened and improved, or shall hereafter open and improve, any coal mine or mines upon the public lands, and shall be in actual possession of the same, shall be entitled to a preference right of entry, under the foregoing provisions, of the mines so opened and improved: *Provided*, That when any association of not less than four persons, severally qualified as in section one of this act, shall have expended not less than five thousand dollars in working and improving any such mine or mines, such association may enter not exceeding six hundred and forty acres, including such mining improvements.

SEC. 3. That all claims under section two of this act must be presented to the register of the proper land-district within sixty days after the date of actual possession and the commencement of improvements on the land, by the filing of a declaratory statement therefor: *Provided*, That when the township plat is not on file at the date of such improvement, filing must be made within sixty days from the receipt of such plat at the district office; *And provided further*, That where the improvements shall have been made prior to the expiration of three months from the passage of this act, sixty days from the expiration of said three months shall be allowed for the filing of a declaratory statement, and no sale under the provisions of this act shall be allowed until the expiration of six months from the date hereof.

SEC. 4. That this act shall be held to authorize only one entry by the same person or association of persons under its provisions; and no association of persons, any member of which shall have taken the benefit of this act either as an individual or as a member of any other association shall enter or hold any other lands under the provisions of this act; and no member of any association which shall have taken the benefit of this act shall enter or hold any other lands under its provisions; and all persons claiming under section two hereof, shall be required to prove their respective rights and pay for the lands filed upon

within one year from the time prescribed for filing their respective claims; and upon failure to file the proper notice, or to pay for the land within the required period, the same shall be subject to entry by any other qualified applicant.

SEC. 5. That in case of conflicting claims upon lands where the improvements shall be hereafter commenced, priority of possession and improvement, followed by proper filing and continued good faith, shall determine the preference right to purchase. And also where improvements have already been made at the date of the passage of this act, division of the land claimed may be made by legal subdivisions, to include, as near as may be, the valuable improvements of the respective parties; and the Commissioner of the General Land Office shall be, and is hereby, authorized to issue all needful rules and regulations for carrying into effect the provisions of this act.

SEC. 6. That nothing in this act shall be construed to destroy or impair any rights which may have attached prior to its passage, or to authorize the sale of lands valuable for mines of gold, silver, or copper.

Approved, March 3, 1873. (17 Stats., p. 607.) Title VIII., Nos. 534 to 541.

No. 95.—An Act authorizing joint Entry by Pre-emption Settlers, and for other Purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when settlements have been made upon agricultural public lands of the United States prior to the survey thereof, and it has been or shall be ascertained, after the public surveys have been extended over such lands, that two or more settlers have improvements upon the same legal subdivision, it shall be lawful for such settlers to make joint entry of their lands at the local land-office, or for either of said settlers to enter into contract with his co-settlers to convey to them their portion of said land after a patent is issued to him, and after making said contract, to file a declaratory statement in his own name, and prove up and pay for said land, and proof of joint occupation by himself and others, and of such contract with them made shall be equivalent to proof of sole occupation and pre-emption by the applicant: *Provided, That* in no case shall the amount patented under this act exceed one hundred and sixty acres, nor shall this act apply to lands not subject to homestead or pre-emption entry.

SEC. 2. That effect shall be given to this act by regulations to be prescribed by the Commissioner of the General Land-Office.

Approved, March 3, 1873. (17 Stats., p. 609.) Title III., No. 360.

No. 96.—An Act granting the Right of Way through the public Lands to the Utah Northern Railroad Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of enabling the Utah and Northern Railroad Company, a corporation organized under the laws of the Territory of Utah, to build and extend

its line by way of Bear River Valley, Soda Springs, Snake River Valley, and through Montana Territory, to a connection with the Northern Pacific Railroad, by the most advantageous and practicable line, to be selected by said company, the right of way through the public lands in the Territory of Utah, Idaho, and Montana is hereby granted to said company. Said right of way hereby granted to said company is to be the extent of one hundred feet in width on each side of the central line of said road where it may pass over the public lands. There is also hereby granted to said company all necessary ground, not to exceed twenty acres for each ten miles in length of the main line of said railroad, for station-buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, and water-stations. And whenever it may be necessary to use material from the public lands for the construction of said road it may be done; but no private property shall be taken for the use of said company, except in the manner now provided by section three of an act entitled "An act to amend an act entitled 'An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the government the use of the same for postal, military, and other purposes,' approved July first, eighteen hundred and sixty-two," approved July second, eighteen hundred and sixty-seven.

SEC. 2. That said company shall be authorized and empowered to mortgage, in the usual manner, their franchise, road-bed, and all property belonging to said company, to an amount not to exceed fifteen thousand dollars per mile for the entire length of said road, upon such terms as may seem to them best; and upon said mortgage may issue mortgage bonds, not to exceed the same amount per mile; but in no case shall the United States be liable in any way whatever for anything done by said company.

SEC. 3. That the rights herein granted shall not preclude the construction of other roads through any canyon, defile, or pass on the route of said road.

SEC. 4. That the said railroad company shall locate the route of said railroad and file a map of such location within one year in the office of the Secretary of the Interior, and shall complete its railroad within ten years after the passage of this act; and nothing herein contained shall be construed as recognizing or denying the authority of the legislature of Utah Territory to create railroad corporations.

SEC. 5. The Congress reserves to itself the right to alter, amend, or repeal this act whenever in its judgment the interests of the people may require it.

Approved, March 3, 1873. (17 Stats., p. 612.)

No. 97.—An Act supplemental to an Act entitled "An Act granting the Right of Way through the public Lands for the Construction of a Railroad from Great Salt Lake to Portland, Oregon," approved April twelfth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Portland, Dalles and Salt Lake Railroad Company shall have the right to take from the public lands of the United States, timber, stone, and other material, necessary for the construction of its road.

SEC. 2. That this act shall at all times be subject to amendment or repeal by Congress.

Approved, March 3, 1873. (17 Stats., p. 612.) See No. 52.

No. 98.—An Act to amend an Act entitled "An Act granting the Right of Way to the Walla-Walla and Columbia River Railroad Company, and for other Purposes," approved March third, eighteen hundred and sixty-nine.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all after and including the word "Provided," in the tenth line of section three of an act entitled "An act granting the right of way to the Walla-Walla and Columbia River Railroad Company, and for other purposes," approved March third, eighteen hundred and sixty-nine, be, and the same is hereby modified as follows:

SEC. 2. That the right is hereby granted to the said Walla-Walla and Columbia River Railroad Company to take from the public lands, earth, stone, timber and other materials, for the construction of the Walla-Walla and Columbia River Railroad for two years from the passage of this act.

Approved, March 3, 1873. (17 Stats., p. 613.)

No. 99.—An Act to authorize the President to ascertain the Value of certain Lands in the State of Iowa, north of the Raccoon Fork of the Des Moines River held by Settlers under the Pre-emption and Homestead Laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the President of the United States shall be, and he is hereby, authorized to appoint three commissioners, who shall ascertain the number of acres, and by appraisement or otherwise the value thereof exclusive of improvements, of all such lands lying north of Raccoon Fork of the Des Moines river, in the State of Iowa, as may now be held by the Des Moines Navigation and Railroad Company, or persons claiming title under it adversely to persons holding said lands, either by entry or under the pre-emption or homestead laws of the United States, and on what terms the adverse holders thereof will relinquish the same to the United States; and that they report the facts at the commencement of the next session of Congress; but nothing herein contained shall be held to affect, in any manner, the question of title to any of said lands.

SEC. 2. That the compensation of said commissioners shall be eight dollars per diem during the time they shall be engaged in said service.

Approved, March 3, 1873. (17 Stats., p. 618.)

No. 100.—An Act to abolish the tribal Relations of the Miami Indians, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if the Miami tribe of Indians in Kansas shall signify to the President of the United

States their desire to sell the lands reserved for the future homes of the said Indians by the first article of the treaty of June fifth, eighteen hundred and fifty-four, and which remain unallotted, together with the school-section mentioned in said article, said lands shall be disposed of in the following manner to wit: The said secretary shall appoint three disinterested and competent persons, who shall, after being duly sworn, to perform said service faithfully and impartially, personally examine and appraise said lands by legal subdivisions of one hundred and sixty acres or less, separately, and make return thereof to the commissioner of Indian affairs: *Provided*, That the Secretary of the Interior may, in his discretion, set aside any appraisements that may be made under the provisions of this act, and cause a new appraisement to be made: *And provided further*, That in making said appraisement, the land and improvements made by the United States and Indians shall be included, and the improvements made by white settlers shall be excluded in determining an estimate of the value thereof.

SEC. 2. That each bona-fide settler occupying any portion of said lands at the date of the passage of this act, and having made valuable improvements thereon, or the heirs at law of such, who is a citizen of the United States, or who has declared his intention to become such, shall be entitled, at any time within one year from the return of said appraisement, to purchase, for cash, the land so occupied and improved by him, not to exceed one hundred and sixty acres in each case, at the appraised value thereof, under such rules and regulations as the Secretary of the Interior may prescribe. And on failure to make payment within one year from date of said approval of appraisement the right of such settler to purchase as aforesaid shall cease, and it shall be the duty of the Secretary of the Interior to sell the same, either at public sale or on sealed bids, for cash, to the highest bidder, at not less than the appraised value, nor less than one dollar and twenty-five cents per acre, after due notice by public advertisement. And all lands referred to in this and the foregoing sections not so occupied and improved by settlers at the date of the approval of this act shall be appraised by said appraisers, including all improvements thereon of every character, and sold by direction of the Secretary of the Interior to the highest bidder, for cash, after due advertisement, either at public sale or on sealed bids, at not less than the appraised value, nor less than one dollar and twenty-five cents per acre as aforesaid, in quantities not exceeding one hundred and sixty acres aforesaid.

SEC. 3. * * On the presentation of said certificate (of citizenship from the court) to the Secretary of the Interior, with satisfactory proof of identity, he may, at the request of such person or persons, cause the lands severally held by them and their minor children to be conveyed to them by patent in fee simple without the power of alienation and may, at his discretion, cause to be paid to them, from to time, their proportion of all the moneys and effects of said tribe held for them by the United States, or which may be received as the net proceeds of the sale of lands under the provisions of this act: after which said Indians and their minor children shall cease to be members of any Indian tribe; but the lands so patented to them shall not be subject to levy, taxation, or sale during the natural lives of said Indians, or of their minor children.

* * * * *

Approved, March 3, 1873. (17 Stats., p. 631.) See No. 126.

No. 101.—An Act to quiet the Title to the Lands of the Settlers on Lands claimed by the West Wisconsin Railway Company.

WHEREAS, by the neglect of the Commissioner of the General Land-Office to have the lands withdrawn from market embraced in the grant of lands from the town of Pomah to the city of Hudson, in the State of Wisconsin, as soon as the West Wisconsin Railway Company (to which company the said grant belongs) had finally located its road and filed the map of such location, a large amount of lands—about twenty thousand acres—were taken up under the homestead laws and otherwise entered: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That provided said West Wisconsin Railway Company shall waive and release all claims to any lands taken up under the homestead laws or otherwise entered after the final location of their road, as aforesaid, it shall be lawful for said company to make up any such deficiency in their grant, not however to exceed twenty thousand acres, from the vacant odd-numbered sections from the south-eastern part or portion of the indemnity limits of the former grant for the branch roads from the said city of Hudson to Lake Superior.

Approved, March 3, 1873. (17 Stats., p. 634.)

No. 102.—An Act to amend the act entitled "An Act to provide for the removal of the Flathead and other Indians from the Bitterroot Valley in the Territory of Montana," approved June fifth, eighteen hundred and seventy-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time of sale and payment of pre-empted lands in the Bitterroot Valley, in the Territory of Montana, is hereby extended for the period of two years from the expiration of the time allotted in the act entitled "An act to provide for the removal of the Flathead and other Indians from the Bitterroot Valley, in the Territory of Montana," approved June fifth, eighteen hundred and seventy-two.

SEC. 2. That the benefit of the homestead act is hereby extended to all the settlers on said lands who may desire to take advantage of the same.

Approved, February 11, 1874. (18 Stats., p. 15.) See No. 70 and Title X., Nos. 569,570.

No. 103.—An Act to amend the act entitled "An Act to encourage the growth of timber on western prairies."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act entitled "An act to encourage the growth of timber on western prairies," approved March third, eighteen hundred and seventy-three, be, and the same is hereby, amended so as to read as follows: That any person who is the head of a family or who has arrived at the age of twenty-

one years, and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, who shall plant, protect, and keep in a healthy, growing condition for eight years, forty acres of timber, the trees thereon not being more than twelve feet apart each way, on any quarter-section of any of the public lands of the United States, or twenty acres on any legal subdivision of eighty acres, or ten acres on any legal subdivision of forty acres, or one-fourth part of any fractional subdivision of land less than forty acres, shall be entitled to a patent for the whole of said quarter-section, or of such legal subdivision of eighty or forty acres, or fractional subdivision of less than forty acres, as the case may be, at the expiration of said eight years, on making proof of such fact by not less than two credible witnesses: *Provided*, That not more than one-quarter of any section shall be thus granted, and that no person shall make more than one entry under the provisions of this act, unless fractional subdivisions of less than forty acres are entered which, in the aggregate shall not exceed one quarter-section.

SEC. 2. That the person applying for the benefit of this act shall, upon application to the register of the land-district in which he or she is about to make such entry, make affidavit before the register, or the receiver, or some officer authorized to administer oaths in the district where the land is situated, who is required by law to use an official seal, that said entry is made for the cultivation of timber, and upon filing said affidavit with said register and said receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified; and the party making an entry of a quarter-section under the provisions of this act shall be required to break ten acres of the land covered thereby the first year, ten acres the second year, and twenty acres the third year after date of entry, and to plant ten acres of timber the second year, ten acres the third year, and twenty acres the fourth year after date of entry. A party making an entry of eighty acres shall break and plant at the times hereinbefore prescribed, one half of the quantity required of a party who enters a quarter-section, and a party entering forty acres shall break and plant, at the times hereinbefore prescribed, one-quarter of the quantity required of a party who enters a quarter-section, or a proportionate quantity for any smaller fractional subdivision: *Provided however*, That no final certificate shall be given or patent issued for the land so entered until the expiration of eight years from the date of such entry; and, if at the expiration of such time, or at any time within five years thereafter, the person making such entry, or if he or she be dead, his or her heirs or legal representatives shall prove, by two credible witnesses, that he, or she, or they have planted, and, for not less than eight years, have cultivated and protected such quantity and character of timber as aforesaid, they shall receive a patent for such quarter-section or legal subdivision of eighty or forty acres of land, or for any fractional quantity of less than forty acres, as herein provided. And in case of the death of a person who has complied with the provisions of this act for the period of three years, his heirs or legal representatives shall have the option to comply with the provisions of this act, and receive at the expiration of eight years, a patent for one hundred and sixty acres, or receive without delay a patent for forty acres, relinquishing all claim to the remainder.

SEC. 3. That if at any time after the filing of said affidavit, and prior

to the issuing of the patent for said land, the claimant shall abandon the land, or fail to do the breaking and planting required by this act, or any part thereof, or shall fail to cultivate, protect, and keep in good condition such timber, then, and in that event, such land shall be subject to entry under the homestead laws, or by some other person under the provisions of this act: *Provided*, That the party making claim to said land, either as a homestead settler or under this act, shall give, at the time of filing his application, such notice to the original claimant as shall be prescribed by the rules established by the Commissioner of the General Land-Office, and the rights of the parties shall be determined as in other contested cases.

SEC. 4. That each and every person who, under the provisions of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two, or any amendment thereto, having a homestead on said public domain, who at any time after the end of the third year of his or her residence thereon, shall, in addition to the settlement and improvements now required by law, have had under cultivation, for two years, one acre of timber, the trees thereon not being more than twelve feet apart each way, and in a good thrifty condition, for each and every sixteen acres of said homestead, shall, upon due proof of such fact by two credible witnesses, receive his or her patent for said homestead.

SEC. 5. That no land acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of certificate therefor.

SEC. 6. That the Commissioner of the General Land-Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and the receivers of the several land-offices shall each be entitled to receive two dollars at the time of entry, and the same sum when the claim is finally established and the final certificate issued.

SEC. 7. That the fifth section of the act entitled "An act in addition to an act to punish crimes against the United States, and for other purposes," approved March third, eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

SEC. 8. That parties who have already made entries under the act approved March third, eighteen hundred and seventy-three, of which this is amendatory, shall be permitted to complete the same upon full compliance with the provisions of this act.

Approved, March 13, 1874. (18 Stats., p. 21.) See Title VII., Nos. 512 to 528.

No. 104.—An Act to establish a reservation for certain Indians in the Territory of Montana.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following described tract of country, in the Territory of Montana, be, and the same is hereby, set apart for the use and occupation of the Gros Ventre, Piegan, Blood, Blackfoot, River Crow, and such other Indians as the President may, from time to time, see fit to locate thereon, viz: Commencing at the northwest corner of the Territory of Dakota, being the

intersection of the forty-ninth parallel of north latitude, and the one hundred and fourth meridian of west longitude; thence south to the south bank of the Missouri river; thence up and along the south bank of said river, to a point opposite the mouth of the Maria's river; thence along the main channel of the Maria's river to Birch Creek; thence up the main channel of Birch Creek to its source; thence west to the summit of the main chain of the Rocky Mountains; thence along the summit of the Rocky Mountains to the northern boundary of Montana; thence along said northern boundary to the place of beginning.

Approved, April 15, 1874. (18 Stats., p. 28.)

No. 105.—An Act to forfeit to the United States certain lands granted to the Placerville and Sacramento Valley Railroad Company to aid in constructing a railroad from the town of Folsom to the town of Placerville, in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands which were granted by Congress in the year eighteen hundred and sixty-six to the Placerville and Sacramento Valley Railroad Company to aid in constructing a railroad from the town of Folsom to the town of Placerville, in the State of California, and which have not been patented by the United States to said company under said grant which have expired by limitation, are hereby declared forfeited to the United States, and these lands shall hereafter be disposed of as other public lands of the United States.

Approved, April 15, 1874. (18 Stats., p. 29.)

No. 106.—An act to ratify an agreement with certain Ute Indians in Colorado, and to make an appropriation for carrying out the same.

* * * * *
ARTICLE I. The confederated band of the Ute Nation hereby relinquish to the United States all right, title, and claim and interest in and to the following described portion of the reservation heretofore conveyed to them by the United States, viz: Beginning at a point on the eastern boundary of said reservation fifteen miles due north of the southern boundary of the Territory of Colorado, and running thence west on a line parallel to the said southern boundary to a point on said line twenty miles due east of the western boundary of Colorado Territory; thence north by a line parallel with the western boundary to a point ten miles north of the point where said line intersects the thirty-eighth parallel of north latitude; thence east to the eastern boundary of the Ute reservation; thence south along said boundary to the place of beginning: *Provided*, That if any part of the Uncopagre Park shall be found to extend south of the north line of said described country, the same is not intended to be included therein, and is hereby reserved and retained as a portion of the Ute reservation.

ARTICLE II. The United States shall permit the Ute Indians to hunt upon said lands so long as the game lasts and the Indians are at peace with the white people. * * * * *

Approved, April 29, 1874. (18 Stats., p. 36.)

No. 107.—An act for the relief of settlers on the Cherokee strip in Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all persons who, by the provisions of the second section of the act entitled "An act to carry out certain provisions of the Cherokee treaty of eighteen hundred and sixty-six, and for the relief of settlers on the Cherokee lands in the State of Kansas," approved May eleventh, eighteen hundred and seventy-two who have become entitled at any time to enter and purchase any portion of the lands mentioned in said act, but who have failed to make proof of settlement, entry, and payment within the times provided by said act, shall have and be allowed additional time within which to make such proof of settlement, entry, and payment to the first day of January, eighteen hundred and seventy-five; and no forfeiture of any rights of such persons shall be had or have effect by reason of failure heretofore to make such proof of settlement, entry, and payment within the time provided by said act, anything in the said act to the contrary notwithstanding; and all persons availing themselves of the provisions of this act shall, at the time of entry and payment, pay interest on the purchase money of their lands at the rate of five per centum per annum from the time at which such payments should have been made by the terms of the aforesaid act to the time that payment shall be made.

Approved, April 29, 1874. (18 Stats., p. 41.) See No. 58 and Title X., No. 562.

No. 108.—An Act for the relief of certain settlers on the Fort Randall military reservation.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be and he is hereby, authorized to transfer to the custody of the Department of the Interior such portions of the military reservation of Fort Randall, in Dakota, as were actually occupied by settlers prior to the promulgation of the order of the President of June fourteenth, eighteen hundred and sixty, setting apart the reservation for military purposes, and, further, such portions of the said reservation as were released from military occupation and control between the years eighteen hundred and sixty-seven and eighteen hundred and seventy and were during that time settled upon in good faith and in the belief that the lands were open to settlement.

Sec. 2. That the Secretary of the Interior be authorized to confirm, in accordance with existing laws, the titles of such settlers upon the military reservation of Fort Randall as may be reported by the Secretary of War for that purpose, and to cause patents to be issued for such lands as the aforesaid settlers may be entitled to under existing laws and the provisions of this act.

Sec. 3. That the Secretary of the Treasury be, and he is hereby, authorized to pay to each of the aforesaid settlers the respective amounts that were appraised as the value of their respective improvements, by a military board of survey convened for that purpose, at Fort Randall, under instructions from the War Department, dated March third, eighteen hundred and seventy one: *Provided,* That in case any improvements, or portion thereof, shall have been restored or delivered to any settler, after the appraisement of the same by the said military

board of survey, such settler shall not be entitled to payment under this act for the improvements, or portion thereof, so restored or delivered to him.

Approved, May 18, 1874. (18 Stats., p. 47.)

No. 109.—An Act for the benefit of occupying claimants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That when an occupant of land, having color of title, in good faith has made valuable improvements thereon, and is, in the proper action, found not to be the rightful owner thereof, such occupant shall be entitled in the Federal courts to all the rights and remedies, and, upon instituting the proper proceedings, such relief as may be given or secured to him by the statutes of the State or Territory where the land lies, although the title of the plaintiff in the action may have been granted by the United States after said improvements were so made.

Approved, June 1, 1874. (18 Stats., p. 50.)

No. 110.—An act to extend the time to pre-emptors on the public lands in the State of Minnesota, to make final payment.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the time at which pre-emptors on the public lands in the State of Minnesota, including the lands within Fort Ridgely and Sioux Indian reservations, are now required to make final proof and payment, is extended for the period of two years.

Approved, June 3, 1874. (18 Stats., p. 52.) Title III., No. 368.

No. 111.—An act obviating the necessity of issuing patents for certain private land-claims in the State of Missouri, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all of the right, title, and interest of the United States in and to all of the lands in the State of Missouri which have at any time heretofore been confirmed to any person or persons by any act of Congress, or by any officer or officers, or board or boards of commissioners, acting under and by authority of any act of Congress, shall be, and the same are hereby, granted, released, and relinquished by the United States, in fee-simple, to the respective owners of the equitable titles thereto, and to their respective heirs and assigns forever, as fully and as completely, in every respect whatever, as could be done by patents issued therefor according to law.

SEC. 2. That nothing contained in the first section of this act shall, in any manner, abridge, divest, impair, injure or prejudice any valid right, title or interest of any person or persons in or to any portion or part of the lands mentioned in said first section; and this act shall in no wise affect any lands or lots heretofore relinquished to the United States.

SEC. 3. That whenever the Secretary of the Interior shall be of the opinion that the public interest no longer requires the continuance of

the office of recorder of land titles in Missouri, he may close and discontinue the same; and all of the records, maps, plats, field-notes, books, papers, and everything else concerning, pertaining, or belonging to said office of recorder, shall be delivered to the State of Missouri: *Provided, however,* That said State shall provide by law for the reception and safe keeping of said records, maps, plats, field-notes, books, papers, and everything else belonging to said office of recorder, as public records, and for the allowance of free access to the same by the authorities of the United States, for the purpose of taking extracts therefrom, or making copies thereof without charge of any kind: *And provided further,* That when said office of recorder shall be closed and discontinued as aforesaid, the Commissioner of the General Land-Office shall forever thereafter possess and exercise all of the powers and authority and perform all the duties of said recorder.

Approved, June 6, 1874. (18 Stats., p. 62.)

No. 112.—An Act to reduce the area of the military reservation of Fort Sanders, and providing for the survey of said reservation as reduced.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the military reservation of Fort Sanders, in the Territory of Wyoming, is hereby reduced in area, and the said reservation shall, after the passage of this act, be limited and bounded as follows: Beginning at the point where the old stage road to Salt Lake crosses the Big Laramie River, and running thence east four miles; thence south four and five-tenths miles; thence in a west southwest direction to the junction of what is known as the Five Mile Creek with the present south line of the reserve; thence along this creek to its junction with the Big Laramie River; thence along the said Big Laramie River, to the place of beginning.

SEC. 2. That immediately after the passage of this act it shall be the duty of the officer commanding the military department of the Platte, under the direction of the Secretary of War, to cause a direct survey of said reservation to be made in conformity with the provisions of the first section of this act, and to have posts or monuments planted at each of the corners thereof, and so marked that they will indicate the boundaries of said reservation.

SEC. 3. That the lands heretofore constituting the Fort Sanders military reservation outside of the limits of the new reservation, as defined in section one of this act, shall be held to be and have been subject and liable to the operation of the laws of the United States in the same manner and to the same extent as if the same had never been included within the limits of said reservation: *Provided,* That in all cases where any of said last mentioned lands would be subject to entry under the pre-emption and homestead laws of the United States, the actual settlers on said lands shall have the right and privilege to make proof and payment for their respective claims, under the provisions of the pre-emption and homestead laws, by filing their declaratory statements, as provided by existing laws, at any time within six months from the passage of this act.

Approved, June 9, 1874. (18 Stats., p. 65.)

No. 113.—An Act to forfeit certain public lands granted to the Stockton and Copperopolis Railroad, in the State of California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all lands which were granted by Congress in the year eighteen hundred and sixty-seven, to the Stockton and Copperopolis Railroad, to aid in the construction of a railroad from the city of Stockton to the town of Copperopolis, in the State of California, and which have not been patented by the United States to said company under said grant, which has expired by limitation, are hereby declared forfeited to the United States, and these lands shall hereafter be disposed of as other public lands of the United States.

Approved, June 15, 1874. (18 Stats., p. 72.)

No. 114.—An Act to authorize the issuance of patents for lands granted to the State of Oregon in certain cases.

WHEREAS, Certain lands have heretofore, by acts of Congress, been granted to the State of Oregon to aid in the construction of certain military wagon-roads in said State, and there exists no law providing for the issuing of formal patents for said lands: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases when the roads in aid of the construction of which said lands were granted are shown by the certificate of the governor of the State of Oregon, as in said acts provided, to have been constructed and completed, patents for said lands shall issue in due form to the State of Oregon as fast as the same shall, under said grants, be selected and certified, unless the State of Oregon shall by public act have transferred its interests in said lands to any corporation or corporations, in which case the patents shall issue from the General Land-Office to such corporation or corporations upon their payment of the necessary expenses thereof: *Provided*, That this shall not be construed to revive any land grant already expired nor to create any new rights of any kind except to provide for issuing patents for lands to which the State is already entitled.

Approved, June 18, 1874. (18 Stats., p. 80.)

No. 115.—An Act for the relief of certain settlers on the public lands in certain portions of the States of Minnesota and Iowa.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for homestead and pre-emption settlers on the public lands in the counties of Cottonwood, Noble, Martin, Jackson, Watonwan, Murray, Rock, Lyon, Redwood, Brown, Chippewa, and Renville, in the State of Minnesota, and the counties of Iowa which compose the Sioux City Land District, and counties contiguous to either of the above exempted sections, where the crops of such settlers were destroyed or seriously injured by grasshoppers in the year eighteen hundred and seventy-three, and where such grasshoppers shall reappear in eighteen hundred and seventy-four to the like destruction of the crops of such settlers, to

leave and be absent from said lands until May first, eighteen hundred and seventy-five, under such regulations as to proof of the same as the Commissioner of the General Land-Office may prescribe.

SEC. 2. That during such absence no adverse rights shall attach to said lands—such settlers being allowed to resume and perfect their settlements as though no such absence had been enjoyed or allowed.

SEC. 3. That the same exemption from continued residence shall be extended to those making settlements in eighteen hundred and seventy-four and suffering the same destruction of crops as those making settlement of eighteen hundred and seventy-three, or any previous year.

Approved, June 18, 1874. (18 Stats., p. 81.) See No. 130 and Title II., Nos. 310, 311, 312, 313.

No. 116.—An Act to authorize the issue of duplicate agricultural land scrip where the original has been lost or destroyed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress of the twenty-third day of June, eighteen hundred and sixty, relating to the reissue of land warrants in certain cases, be, and the same are hereby, extended so as to include the reissue of agricultural-college land scrip lost, cancelled or destroyed without the fault of the owner thereof, under such rules and regulations as the Secretary of the Interior may prescribe.

Approved, June 20, 1874. (18 Stats., p. 111.) Title XVI., No. 629.

No. 117.—An Act to ascertain the possessory rights of the Hudson Bay Company and other British subjects within the limits which were the subject of the award of his Majesty the Emperor of Germany under the treaty of Washington of May eight, eighteen hundred and seventy-one, and for other purposes.

WHEREAS it was stipulated by article one of the treaty concluded at Washington on the fifteenth day of June, eighteen hundred and forty-six, between the United States and Great Britain, that the line of boundary between the territories of the United States and her Britannic Majesty, from the point on the forty-ninth parallel of north latitude up to which it had already been ascertained, should be continued westward along said parallel of north latitude “to the middle of the channel which separates the continent from Vancouver’s Island, and thence southerly through the middle of said channel and of Fuca Straits to the Pacific ocean;” and whereas by article three of the treaty aforesaid, it was stipulated that “in the future appropriation of the territory south of the forty-ninth parallel of north latitude, as provided in the first article of this treaty, the possessory rights of the Hudson Bay Company, and of all British subjects who may be in the occupation of land or other property lawfully acquired within the said territory, shall be respected;” and whereas by article thirty-four of the treaty concluded at Washington on the eighth day of May, eighteen hundred and seventy-one, the question of where “the boundary which runs southerly through the middle of the channel aforesaid” should be located was submitted to His Majesty the Emperor of Germany, whose decision was to be final and without appeal; and whereas by the award

of His Majesty the Emperor of Germany of October twenty-first, eighteen hundred and seventy-two, said boundary was established, and it now devolves upon the United States to discharge its treaty obligations: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That a commission be appointed by the President of the United States, to make and report to the Secretary of the Interior a list of all British subjects who, on the fifteenth day of June, eighteen hundred and forty-six, were in the occupation of land, lawfully acquired, within the limits which were the subject of the award of His Majesty the Emperor of Germany, together with a description of the land actually occupied by each at said date; and said commissioner shall proceed to the vicinity of the land in question, and there receive proof of the occupancy of such land and of the mode by which such occupancy was acquired, after first giving reasonable notice as to the said matters to be so reported by him. Such proof shall consist of oral-testimony, under oath and such documentary proofs as the said occupants may present. The testimony of all witnesses shall be reduced to writing and all documentary proof offered by the parties and received by the commissioner shall be attached to the deposition of the party offering such proofs, which testimony and proofs shall be submitted by said commissioner with his report, and such report shall be subject to review by the Secretary of the Interior, whose action thereon shall be final. For the purposes of this act, the said commissioner shall have authority to subpoena witnesses and to administer oaths and take testimony.

SEC. 2. That said commissioner shall receive for his services ten dollars per diem, together with traveling expenses at the rate of ten cents per mile for the distance actually traveled in the execution of said commission; and the sum of one thousand dollars is hereby appropriated from any unappropriated money in the Treasury to defray such expenses.

SEC. 3. That all British subjects whose claims shall be approved by the Secretary, as provided in section one of this act, shall be allowed to purchase from the United States the land so designated at any time within one year from such approval, at the ordinary minimum price per acre where the lands are situated outside railroad limits, and at double minimum price where the lands are within railroad limits.

SEC. 4. That such entries shall be according to legal subdivisions, so as to include the improvements of such occupants; and where two or more parties shall have improvements on the same smallest legal subdivision, they may make a joint entry thereof: *Provided*, That in case entry and payment are not made within one year from the date of such approval by the Secretary of the Interior, then all possessory rights named in article three of the treaty of June fifteenth, eighteen hundred and forty-six, shall be considered forfeited, and the lands shall thereafter be deemed and treated as a part of the public domain, to be disposed of as other lands.

SEC. 5. That it shall be the duty of the Secretary of the Interior to make all needful regulations to give effect to the provisions of this act.

Approved, June 20, 1874. (18 Stats., p. 129.)

No. 118.—An Act granting to the Nevada County Narrow Gauge Railroad Company a right of way through the public lands for a railroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the Nevada County Narrow Gauge Railroad Company, a corporation organized under the laws of the State of California and having its principal place of business in Grass Valley, Nevada County, State of California, its successor and assigns, for a railroad from Colfax to Nevada City, by the most direct, practicable route, being a distance of about twenty miles. Said right of way is granted to said railroad to the extent of fifty feet in width on each side of said railroad where it may pass through the public domain, including the right to take, from the public lands adjacent, materials of earth, stone, and timber necessary for the construction thereof; also including grounds for station-buildings, workshops, depots, machine shops, switches, side tracks, turn tables, and water stations, to an amount not exceeding ten acres not mineral lands for each station, which stations shall not occur oftener than one in ten miles: *Provided*, That the grant hereby made shall not take effect on any lands to which any bona fide pre-emption or homestead claim has attached before the definite location of the line of road, and the designation of the lands to be appropriated under this law: *Provided further*, That within six months from the passage of this act the Nevada County Narrow Gauge Railroad Company shall file with the Secretary of the Interior a map to be approved by him, exhibiting the line of the railroad of said company, as the same has been located and the ground to be occupied at the several stations; *And provided further*, That the said railroad shall be completed within four years from the passage of this act.

SEC. 2. That in case the right of way granted by this act extends through any canyon, pass, or defile, any other railroad corporation shall not be excluded from a passage through the same or over and upon the track of the constructed road upon equitable terms; and in case of disagreement, upon application of either of the parties, the same shall be adjusted by the Secretary of the Interior, after hearing, upon reasonable notice to the parties, whose decision may be enforced by a court of competent jurisdiction; *Provided*, That this act shall not prevent other railroads from crossing the same at grade, *and provided further* that the right of Congress at any time to amend, alter or repeal this act is hereby reserved.

Approved, June 20, 1874. (18 Stats., p. 130.)

No 119.—An Act to legalize entries of public lands under the homestead laws in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases of entries of public lands heretofore made under the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two, where the affidavit required by section two of said act was made before the clerk of the county of the residence of the person making the entry, without having

first made the settlement and improvement required by the provisions of section three of the act entitled "An act amendatory of the homestead law, and for other purposes," approved March twenty-first, eighteen hundred and sixty-four, said affidavits be, and the same are hereby, legalized and confirmed, so as to have the same force and validity as if the provisions of said last-named act had been strictly complied with: *Provided*, That nothing in this act shall have the effect or be construed to impair the valid and paramount adverse rights of any person or corporation to any of such lands, except in so far as the right of Congress to protect the claims or rights of homestead settlers upon lands within the limits of grants of lands to any railroad company may have been reserved in the acts making such grants and be now lawfully existing.
Approved, June 22, 1874. (18 Stats., p. 192.)

No. 120.—An Act for the relief of settlers on railroad lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the adjustment of all railroad land grants, whether made directly to any railroad company or to any State for railroad purposes, if any of the lands granted be found in the possession of an actual settler whose entry or filing has been allowed under the pre-emption or homestead laws of the United States subsequent to the time at which, by the decision of the land-office, the right of said road was declared to have attached to such lands, the grantees, upon a proper relinquishment of the lands so entered or filed for, shall be entitled to select an equal quantity of other lands in lieu thereof from any of the public lands not mineral and within the limits of the grant not otherwise appropriated at the date of selection, to which they shall receive title the same as though originally granted. And any such entries or filings thus relieved from conflict may be perfected into complete title as if such lands had not been granted: *Provided*, That nothing herein contained shall in any manner be so construed as to enlarge or extend any grant to any such railroad or to extend to lands reserved in any land grant made for railroad purposes: *And provided further*, That this act shall not be construed so as in any manner to confirm or legalize any decision or ruling of the Interior Department under which lands have been certified to any railroad company when such lands have been entered by a pre-emption or homestead settler after the location of the line of the road and prior to the notice to the local land-office of the withdrawal of such lands from market.

Approved, June 22, 1874. (18 Stats., p. 194.) Title IV., Nos. 394, 421.

No. 121.—An Act supplementary to the act entitled "An act to incorporate the Texas Pacific Railroad Company, and to aid in the construction of its road, and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Texas and Pacific Railway Company is hereby empowered to secure, by one or more mortgages upon the whole or any portion of its line, the construction-bonds heretofore authorized to be issued, and to cancel the mortgage now on record with the Secretary of the Interior so far as the same

can be done without prejudice to existing rights, and to substitute therefor the mortgage or mortgages hereby authorized, which substituted mortgages shall expressly reserve all rights which may have been acquired under the existing mortgage: *Provided*, That the aggregate of the said bonds to be issued under and secured by said mortgage or mortgages shall not exceed the limit heretofore fixed by Congress; and said mortgages for the division east of Fort Worth shall embrace the roads and property of the Southern Pacific Railroad Company and of the Southern Trans-continental Railway Company, heretofore merged in and consolidated with the said Texas and Pacific Railway Company, under the authority and requirements of the laws of the State of Texas; and which roads so merge as aforesaid shall for that and all other purposes be deemed and taken to be a part of the said Texas and Pacific Railway, and shall hereafter be subject to all the provisions and limitations of the act of Congress incorporating said company, and of the supplements thereto; *And provided further*, That nothing in this act shall be construed or have the effect to entitle said corporation to any other or further rights to public lands, or in any other respect as against the United States, than such as by law it is now entitled to.

Approved, June 22, 1874. (18 Stats., p. 197.) See Nos. 33, 53.

No. 122.—An Act authorizing the Secretary of War to relinquish and turn over to the Interior Department parts of certain reservations in the Territory of Arizona as may be no longer required for military purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of War be, and he is hereby, authorized to relinquish and turn over to the Department of the Interior, for restoration to the public domain, such parts of what are known as the Fort Yuma, Fort Whipple, and Camp Date Creek reservations, in the Territory of Arizona, as may in the opinion of the Secretary of War, be no longer required for military purposes: *Provided*, That the Secretary of the Interior shall expose the same at public offering for sale to the highest bidder in the legal subdivision not greater than one quarter section when the same can be made, and not below the minimum price provided by law. And any land left unsold at such offering to be held thereafter for disposal as other public lands. Notice of such public sale shall be published for sixty days in two newspapers each, one published in the capital of the Territory, and the other circulating nearest the place of sale: *Provided further*, That bona fide settlers, upon any part of said lands prior to the declaration of the reservation lines, shall have a right to acquire title to the lands so occupied by them at said time, not exceeding one hundred and sixty acres each, under the land-laws of the United States.

Approved, June 22, 1874. (18 Stats., p. 201.)

No. 123.—An Act to appropriate lands for the support of schools in certain fractional townships in the State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for all fractional townships in the State of Missouri, which are entitled to public lands

for the support of schools, according to the provisions of the act of Congress approved May twentieth, eighteen hundred and twenty-six, entitled "An act to appropriate lands for the support of schools in certain townships and fractional townships not before provided for," and for which no selections have heretofore been made, there shall be reserved and appropriated out of the public lands; for each of said fractional townships, the amount of land to which they were respectively entitled according to the provisions of said act.

SEC. 2. That the lands to which said fractional townships are entitled as aforesaid shall be selected by the Commissioner of the General Land-Office out of any unappropriated public land within the State of Missouri subject to sale or location at one dollar and twenty-five cents an acre; *Provided*, That said Commissioner, in making such selection, shall select such land as shall be designated to him for that purpose by the county courts of the counties in which such fractional townships are situated; and, when so selected, said lands shall be held by the same tenure, and upon the same terms, for the support of schools in such fractional townships, as sections numbered sixteen are, or may be, held in the State of Missouri.

Approved, June 22, 1874. (18 Stats., p. 202.) See Title V., No. 467.

No. 124.—An Act to extend the Act of March third, eighteen hundred and seventy-three, entitled "An act for the extension of time to the Saint Paul and Pacific Railroad Company for the completion of its roads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress approved March third, eighteen hundred and seventy-three, entitled "An act for the extension of time to the Saint Paul and Pacific Railroad Company for the completion of its roads," be, and the same are hereby revived and extended until the third day of March, A. D., eighteen hundred and seventy-six, and no longer upon the following conditions: That all rights of actual settlers and their grantees who have heretofore in good faith entered upon and actually resided on any of said lands prior to the passage of this act, or who otherwise have legal rights in any of such lands shall be saved and secured to such settlers or such other persons in all respects the same as if said lands had never been granted to aid in the construction of the said lines of railroad.

SEC. 2. That the company taking the benefit of this act shall before acquiring any rights under it, by a certificate made and signed by the president and a majority at least of the directors, and sealed with the corporate seal, accept the conditions contained in this act, and file such acceptance in the Department of the Interior for record and preservation.

Approved, June 22, 1874. (18 Stats, p.. 203.) See Nos. 40, 217.

No. 125.—An Act providing for the sale of the Kansas Indian lands in Kansas to actual settlers, and for the disposition of the proceeds of the sale.

WHEREAS, The Secretary of the Interior, in pursuance of an act ap-

proved May eighth, eighteen hundred and seventy-two has caused to be appraised the lands heretofore owned by the Kansas tribe of Indians, in the State of Kansas, which by the terms of the treaty made by the United States and said Indians, and proclaimed November seventeenth, eighteen hundred and sixty, were to be sold for the benefit of said Indians; which appraisement also includes all improvements on the same, and the value of said improvements distinguishing between improvements made by members of said Indian tribe, the United States, and white settlers; and whereas the appraisement thus made was so high that neither settlers nor purchasers were able to pay the same, and the said land has remained unsold from the passage of the act, Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That each bona fide settler on any of the trust-lands embraced in said act, heretofore reported as such by the commissioners appointed to make said appraisement, and the rejected claimants as bona fide settlers, who were recommended as such by Andrew C. Williams, acting under instructions to Superintendent Hoag, from the Indian Office, dated October twenty-fourth, eighteen hundred and seventy-two, be permitted to make payment of the appraised value of their lands to the local land office at Topeka, Kansas, under such rules as the Commissioner of the General Land-Office may adopt, in six equal annual instalments; the first instalment payable on the first of January, eighteen hundred and seventy-five, and the remaining instalments payable annually from that time, and drawing interest at six per centum per annum until paid: *Provided*, That where there is timber on any of the lands to be sold under the provisions of this act, the Secretary of the Interior shall require the purchaser to enter into bond, with approved security, that he shall commit no waste on the timber, or otherwise, on said land until the last payment is made, and give his notes to secure the purchase money thereof on the terms aforesaid.

SEC. 2. That all the remainder of the trust-lands and of the undisposed portion of the diminished reserve shall be subject to entry at the local land office at Topeka, Kansas, in tracts not exceeding one hundred and sixty acres, unless a legal subdivision of a section shall be fractional and found to contain a greater number of acres, by actual settlers, under such rules and regulations as the Commissioner of the General Land-Office may prescribe. And the parties making such entries shall be required to make payment of the appraised value of the land entered and occupied by each, in the following manner: One-fourth at the time that the entry is made, and the remainder in three equal annual payments, drawing interest at six per centum per annum, which payments shall be secured by notes payable to the United States, and the Secretary of the Interior, shall withhold title until the last payment is made; and the Secretary of the Interior, where there is timber on the lands, shall, in addition, compel the purchaser to enter bond, with approved security, to commit no waste by the destruction of timber, or otherwise, on the premises, until final payment has been made; and the Secretary of the Interior shall cause patents in fee simple to be issued to all parties who shall complete purchases under the provisions of this act: *Provided*, That if any person or persons applying to purchase land under the provisions of this act shall fail to make payment, or to perform any other conditions required by the provisions of this act, or by

rules and regulations that may be prescribed in the execution hereof, within ninety days after such payment shall become due, or performance be required by the terms hereof, or by the rules and regulations which may be prescribed in execution hereof, such person or persons shall forfeit all rights under the provisions of this act, and all claim or right to reimbursement or compensation for previous action or payment by said person or persons under the provisions hereof; and the land proposed to be purchased by such person or persons shall again be subject to sale, as though no action had been had in regard to the same: *And provided*, That all of the lands not taken within twelve months after the passage of this act may be sold in amounts not to exceed one hundred and sixty acres to any one person, at the appraised price in the land district in which they are situated.

SEC. 3. That in preparing or giving their testimony, all settlers or purchasers of land under the provisions of this act may have such testimony taken, after due and legal notice to the opposing party in interest, before any notary public or person qualified to administer an oath, and may forward such testimony with their application to the land offices or parties authorized to dispose of said lands, which testimony shall be received as if taken before the officers of such land office.

SEC. 4. That the net proceeds arising from such sales, after defraying the expenses of appraisement and sale, which have heretofore or may hereafter be incurred, and also the outstanding indebtedness, principal and interest, of said Kansas tribe of Indians, which has heretofore been incurred under treaty stipulations, shall belong to said tribe in common, and the residue not so required shall be placed to their credit on the books of the Treasury, and bear interest at the rate of five per centum per annum, and be held as a fund for their civilization, the interest of which and the principal, when deemed necessary by the President of the United States, may be used for such purpose.

Approved, June 23, 1874. (18 Stats., p. 272.) Title X., Nos. 567, 568.

No. 126.—An Act to further provide for the sale of certain Indian lands in Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That those persons who by the provisions of the second section of the act entitled "An act to abolish the tribal relations of the Miami Indians, and for other purposes," approved March third, eighteen hundred and seventy-three, are entitled to purchase, for cash, the land occupied by them at the appraised value thereof, be permitted to make payment for said lands at the land office at Topeka, Kansas, under such regulations as may be prescribed by the Secretary of the Interior, in three equal annual instalments; the first instalment to be payable on or before the thirtieth day of October, eighteen hundred and seventy-four, and the remaining two instalments annually thereafter, with interest at the rate of six per centum per annum, from the thirtieth day of October, eighteen hundred and seventy-four.

SEC. 2. That those persons who, by the provisions of the act entitled "An act to provide for the sale of certain New York Indian lands in Kansas," approved February nineteenth, eighteen hundred and seventy-three, are entitled to enter and purchase, for cash, the lands in said act

set forth, be permitted to make payment for the same at the land office at Independence, Kansas, under such regulations as the Secretary of the Interior may prescribe, in two equal instalments; the first instalment to be payable on or before the thirtieth day of September, eighteen hundred and seventy-five, and the remaining instalment within one year thereafter, with interest at the rate of six per centum per annum from said thirtieth day of September, eighteen hundred and seventy-five. *Provided, however,* That this act shall only apply to actual settlers on the land so purchased.

Approved, June 23, 1874. (18 Stats., p. 273.) See No. 85.

No. 127.—An Act granting the right of way through the public lands to the Arkansas Valley Railway Company.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands be, and the same is hereby, granted to the Arkansas Valley Railway Company, a corporation duly created under the laws of the Territory of Colorado, its successors and assigns, for a railroad and telegraph line, now partially completed and in operation, from a point on the line of the Kansas Pacific Railway at Kit Carson; thence southward to West Las Animas; thence westward along or near the Arkansas River to Pueblo, a distance of about one hundred and fifty miles, and within said Territory of Colorado. Said right of way is granted to said railway company to the extent of one hundred feet in width on each side of said railroad where it may pass through the public domain and military reservation at Fort Lyon, including grounds for station buildings, work-shops, depots, machine-shops, switches, side-tracks, turn-tables, cattle yards, and water stations, to the amount not exceeding ten acres, not mineral lands, for each station, and for not more than one station in every ten miles; together with the right to take, from the public lands while belonging to the United States, adjacent to said right of way, stone, earth, and other material necessary for the construction, maintenance, and repair of its railway and telegraph; *Provided,* That within six months from the passage of this act the said Arkansas Valley Railway Company shall file with the Secretary of the Interior a map, to be approved by him, exhibiting the line of the railroad of said company as the same has been located: *And provided further,* That the right of way across the military reservation at Fort Lyon, and the depot grounds thereon, shall be located and set aside under the direction of the Secretary of War: *Provided,* That this grant of the right of way shall not prevent any railroad company from crossing said Arkansas Valley Railway Company at grade.

Approved, June 23, 1874. (18 Stats., p. 274.)

No. 128.—An Act to extend the time for completing entries of Osage Indian lands in Kansas.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all actual settlers upon the Osage Indian trust and diminished reserve lands in the

State of Kansas shall be allowed one year from the passage of this act in which to make proof and payment: *Provided*, That all purchasers who avail themselves of the provisions of this act shall pay interest on the purchase price of their lands at the rate of five per centum from the date when payment was required by previous laws to date of actual payment: *And provided further*, That no further extension of payment shall be granted than that provided for in this act, and that all occupants now upon said Osage lands shall file their application to purchase the lands occupied by them within three months after the passage of this act, or forfeit all right or claim to the same.

Approved, June 23, 1874. (18 Stats., p. 283.) See Title X., Nos. 555 to 562.

No. 129.—An Act to confirm an agreement made with the Shoshone Indians (eastern band) for the purchase of the south part of their reservation in Wyoming Territory.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the agreement entered into on the twenty-sixth day of September, in the year of our Lord, eighteen hundred and seventy-two, between Felix R. Brunot, commissioner on the part of the United States, and the chief, head-men, and men of the eastern band of Shoshone Indians, in the words and figures following, be, and the same is hereby, confirmed, satisfied, and approved by the Congress and President of the United States: *Provided*, That the cattle furnished under this agreement shall be good, young American cattle, suitable for breeding purposes.

Articles of a convention made and concluded at the Shoshone and Bannock Indian agency in Wyoming Territory, this twenty-sixth day of September, in the year of our Lord, eighteen hundred and seventy-two, by and between Felix R. Brunot, commissioner on the part of the United States, and the chief, head men, and men of the eastern band of Shoshone Indians, constituting a majority of all the adult male Indians of said band on tribe of Indians, and duly authorized to act in the premises, witnesseth:

That whereas by article eleven of a treaty with the Shoshone (eastern band) and Bannock tribes of Indians, made the third day of July, eighteen hundred and sixty-eight, at Fort Bridger, Utah Territory, a reservation was set apart for the use and occupancy of said tribes of Indians in the following words: "The United States further agrees that the following district of country, to wit, 'commencing at the mouth of Owl Creek and running, due south, to the crest of the divide between the Sweetwater and the Papo-Agie Rivers; thence along the crest of said divide and the summit of Wind River Mountains to the longitude of North Fork of Wind River; thence due north, to mouth of said North Fork, and up its channel to a point twenty miles above its mouth; thence in a straight line to head waters of Owl Creek, and, along middle of channel of Owl Creek, to place of beginning,' shall be, and the same is, set apart for the absolute and undisturbed use and occupation of the Shoshone Indians herein named:"

And whereas, previous to and since the date of said treaty, mines have been discovered, and citizens of the United States have made improvements within the limits of said reservation, and it is deemed advisable for the settlement of all difficulty between the parties, arising

in consequence of said occupancy, to change the southern limit of said reservation :

I. The Shoshone band or tribe of Indians (eastern band) hereby cede to the United States of America that portion of their reservation in Wyoming Territory which is situated south of a line beginning at a point on the eastern boundary of the Shoshone and Bannock reservation, due east to the mouth of the Little Papo-Agie, at its junction with the Papo-Agie, and running from said point west to the mouth of the Little Papo-Agie ; thence up the Papo-Agie to the North Fork, and up the North Fork to the mouth of the canyon ; thence west to the western boundary of the reservation.

II. The United States agree to pay to the Shoshone (eastern band) or tribe the sum of twenty-five thousand dollars ; said sum to be expended under the direction of the President for the benefit and use of said Indians in the following manner, viz : On or before the tenth day of August of each year, for the term of five years after the ratification of this agreement, five thousand dollars shall be expended in the purchase of stock cattle, and said cattle delivered to the Shoshones on their reservation. Second. The salary of five hundred dollars per annum shall be paid by the United States for the term of five years to Washa-kie, chief of the Shoshones.

III. Within the term of six months, and as soon as practicable after the ratification of this agreement, the United States shall cause the southern line of the Shoshone reservation, as herein designated, to be surveyed, and marked at suitable points on the ground, and until said line has been so surveyed and marked, the United States binds itself not to permit the intrusion of any white persons upon any of the agricultural or other lands within the limit of the district proposed to be ceded.

IV. This convention or agreement is made subject to the approval of the President and the ratification or rejection of the Congress of the United States.

Approved, December 15, 1874. (18 Stats., p. 291.)

No. 130.—An Act for the relief of certain settlers on the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for homestead and pre-emption settlers on the public lands, whose crops were destroyed or seriously injured by grasshoppers in the year eighteen hundred and seventy-four to leave and be absent from said lands until July first, eighteen hundred and seventy-five, under such regulations as to proof of the same as the Commissioner of the General Land-Office may prescribe ; and where such grasshoppers shall re-appear in eighteen hundred and seventy-five, to the like destruction of the crops of settlers, the right to leave and be absent as aforesaid shall continue to July first, eighteen hundred and seventy-six.

SEC. 2. That during such absence no adverse rights shall attach to said lands ; such settlers being allowed to resume and perfect their settlement as though no such absence had been enjoyed or allowed.

SEC. 3. That the time for making final proof and payment by pre-emptors whose crops have been destroyed or injured as aforesaid, is

hereby extended for one year after the expiration of the term of absence provided for in the first section of this act.

Approved, December 28, 1874. (18 Stats., p. 294.) See No. 115 and Title II., Nos. 310, 311, 312, 313.

No. 131.—An Act explanatory of the resolution entitled "A resolution for the relief of settlers upon the Absentee Shawnee lands in Kansas," approved April seventh, eighteen hundred and sixty-nine.

WHEREAS several tracts of land ceded to the Shawnee Indians by the treaty concluded between them and the United States which was proclaimed November second, eighteen hundred and fifty-four, were erroneously set apart and allotted to various individuals of the Shawnee tribe of Indians, and which said allotments were subsequently cancelled, and therefore form a part of the residuum of the land which by the treaty aforesaid was to be set apart for the Absentee Shawnees: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the terms of the resolution approved seventh April, eighteen hundred and sixty-nine, for the relief of the settlers upon the Absentee Shawnee lands in Kansas, should be extended to those settlers who now occupy and have improved tracts of land known and described as the east half of the northeast quarter and the southwest quarter of the northeast quarter of section twenty-nine, in township twelve, of range twenty-three east, of the sixth principal meridian; the south half of the southwest quarter of section five; the south half of the southwest quarter, the north half of the southwest quarter, and the northwest quarter of section eight, in township thirteen of range twenty-two east, of the sixth principal meridian; all located in the State of Kansas, within the boundaries of the tract ceded to the Shawnees by the treaty proclaimed on the second November, eighteen hundred and fifty-four.

Approved, January 11, 1875. (18 Stats., p. 295.) See No. 1

No. 132.—An act to grant title to certain lands in the Territory of Arizona.

WHEREAS, certain lands in Santa Cruz Valley, county of Pima, and Territory of Arizona, have for many years been occupied and possessed by persons of Mexican birth, who became citizens of the United States under the treaty of Guadalupe Hidalgo and the Gadsden treaty; and whereas the said persons desire to secure patents for said lands in the small and irregular tracts in which they were originally taken up under Mexican authority, and have been held and cultivated to the present time, and they cannot do so under the existing land laws of the United States; Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the right and title of the United States to the land embraced in sections two, eleven, and fourteen, and the east half of sections three, ten, and fifteen of township fourteen south, range thirteen east, Gila and Salt River meridian, in the county of Pima, Territory of Arizona, be, and the same are hereby, relinquished and granted to the person or persons who have

been in the actual bona-fide occupancy or possession of said land, by themselves or their ancestors or grantors for twenty years next preceding the date of the passage of this act; and it shall be the duty of the register and the receiver of the United States land-office for the district in which said land lies, to hear and determine, subject to the approval of the Commissioner of the General Land-Office, the rights of the parties claiming under this act; and for that purpose the said register and the said receiver shall have power to summon witnesses, administer oaths, and take testimony relative to such occupancy or possession: *Provided*, That no claim as aforesaid shall be of any validity under this act unless it shall have been duly filed with the said register and the said receiver within one year after the passage of this act: *And provided further*, That this grant shall not extend to any reservation of the United States, nor prejudice any valid adverse right or claim, if such exist, to said land, or any part thereof, nor preclude a judicial examination and adjustment thereof.

SEC. 2. That whenever it shall have been determined by the said register and the said receiver, or on appeal by the Commissioner of the General Land-Office or Secretary of the Interior that any tract has been occupied as aforesaid, it shall be the duty of the Surveyor-General for said Territory to cause the said claims to be surveyed in accordance with the lines of such occupancy, and to furnish approved plats of the same, upon the receipt and approval of which said plats, and the field-notes thereof by the Commissioner of the General Land-Office, patents shall issue as in other cases.

SEC. 3. That any part or parts of said designated lands that are not shown, to the satisfaction of the Commissioner of the General Land-Office, to have been so occupied for twenty years, shall be held by him as open to settlement under the provisions of the pre-emption or homestead laws of the United States, and patents may be issued therefor for any number of acres not exceeding one hundred and sixty that parties complying with said legal provisions may desire to hold: *Provided*, That all existing occupants who have settled on said lands within a period of less than twenty years shall have the prior right to acquire the same under the homestead laws of the United States.

Approved, February 5, 1875. (18 Stats., p. 305.)

No. 133.—An Act granting the right of way and depot-grounds to the Oregon Central Pacific Railway Company through the public lands of the United States, from Winnemucca, in the State of Nevada, to the Columbia River, via Portland, in the State of Oregon.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That for the purpose of aiding in the construction of a railway and telegraph line from a point at or near Winnemucca, on the Central Pacific Railroad, in the State of Nevada; thence northwesterly to and across Goose Lake Valley, and by way of Sprague River Valley, to the waters of the Middle Fork of the Willamette River, in the Cascade Mountains; thence down said river, on the north side, to Springfield; thence crossing to and continuing upon the west side of said river to the waters of the Columbia River, via Portland, Oregon, there is hereby granted to the Oregon Central Pacific Railway Company, organized under and by virtue of the laws of

the State of Oregon, on the sixteenth day of September, eighteen hundred and seventy-four, and to their successors and assigns, a strip of land, one hundred feet wide, on each side of the central line of said road, through the public lands, and the necessary lands for depots, stations, side-tracks, and other needful uses in operating said road and telegraph, not exceeding twenty acres at any one place: *Provided*, That the locations for depots, stations, and side-tracks shall not exceed for the whole line of said road more than one location of twenty acres for every ten-miles of the same, and when made upon surveyed lands shall conform to the Government surveys thereof: *And provided further*, That the State or States, within the limits of which said road or any part thereof shall be hereafter situated, shall have the power to regulate and limit the cost of transportation of persons or freight over the same.

SEC. 2. That said company shall, within six months after the location of any section of twenty miles or more of their said road, if the same be upon surveyed lands, and if upon unsurveyed lands, then within six months after the survey thereof by the United States, file a plat of such located section, together with proof thereof, with the register of the land office for the district wherein said located section may be situated, and upon approval thereof the same shall be noted upon the township-plats in said office; and thereafter all lands over which the line of said road shall pass shall be sold, located, or disposed of by the United States, subject to such right of way so located as aforesaid: *Provided*, That the line of said road shall be completed within ten years thereafter: *Provided further*, That this act shall not take effect on any lands to which any bona fide pre-emption or homestead claim has attached before the definite location of the line of road, and the notice of the same has been given to the land-office in the district where the same is located.

SEC. 3. That the rights herein granted shall not preclude the construction of other railroads or telegraph-lines through any canyon, defile, or pass on the route of said road, or the crossing of the same at grade by other railroads.

SEC. 4. That said company shall locate its road within three years from the passage of this act, and complete the said railroad within ten years from the same date, failing in which, this act shall be null and void.

SEC. 5. That Congress hereby reserves the right to alter, amend, or repeal this act any time that the public interest may require it.

Approved, February 5, 1875. (18 Stats., p. 306.)

No. 134.—An Act to amend section two thousand three hundred and twenty-four of the revised statutes, relating to the development of the mining resources of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section two thousand three hundred and twenty-four of the Revised Statutes, be, and the same is hereby, amended so that where a person or company has or may run a tunnel for the purposes of developing a lode or lodes, owned by said person or company, the money so expended in said tunnel shall be taken and considered as expended on said lode or lodes, whether located prior to or since the passage of said act; and such per-

son or company shall not be required to perform work on the surface of said lode or lodes in order to hold the same as required by said act.

Approved, February 11, 1875. (18 Stats., p. 315.) See Copp's Mining Laws.

No. 135.—An Act for the relief of actual settlers on lands claimed to be swamp and overflowed lands in the State of Missouri.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases in the State of Missouri where lands have heretofore been selected and claimed as swamp and overflowed lands by said State, and the various counties therein, by virtue of any act of Congress, and said lands have been withheld from market in consequence thereof by the General Government, and the said State and counties have sold said lands to actual settlers, and said settlers have improved the same to the value of one hundred dollars; said settlers, their heirs, assigns, and legal representatives, who have continued to reside thereon, shall have priority of right to pre-empt or homestead all such lands as may be rejected by the United States as not being in fact swamp and overflowed lands; and it shall be the duty of the Secretary of the Interior to make such rules and regulations as may be necessary to carry into effect the provisions of this act: *Provided*, That nothing herein contained shall prejudice the rights of any person who may have made actual settlement upon such lands under the pre-emption or homestead laws prior to the passage of this act.

Approved, February 23, 1875. (18 Stats., p. 334.) See Title V., No. 464.

No. 136.—An Act making appropriations to supply deficiencies in the appropriations for fiscal year ending June thirtieth, eighteen hundred and seventy-five, and prior years, and for other purposes.

* * * * *
SEC. 15. That any Indian born in the United States, who is the head of a family, or who has arrived at the age of twenty-one years, and who has abandoned, or may hereafter abandon, his tribal relations, shall, on making satisfactory proof of such abandonment, under rules to be prescribed by the Secretary of the Interior, be entitled to the benefits of the act entitled "An act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two, and the acts amendatory thereof, except that the provisions of the eighth section of the said act shall not be held to apply to entries made under this act: *Provided, however*, That the title to lands acquired by any Indian by virtue hereof shall not be subject to alienation or incumbrance, either by voluntary conveyance or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor: *Provided*, That any such Indian shall be entitled to his distributive share of all annuities, tribal funds, lands, and other property, the same as though he had maintained his tribal relations; and any transfer, alienation, or incumbrance of any interest he may hold or claim by reason of his former tribal relations shall be void.

SEC. 16. That in all cases in which Indians have heretofore entered

public lands under the homestead-law, and have proceeded in accordance with the regulations prescribed by the Commissioner of the General Land-Office, or in which they may hereafter be allowed to so enter under said regulations prior to the promulgation of regulations to be established by the Secretary of the Interior under the fifteenth section of this act, and in which the conditions prescribed by law have been or may be complied with, the entries so allowed are hereby confirmed, and patents shall be issued thereon; subject, however, to the restrictions and limitations contained in the fifteenth section of this act in regard to alienation and incumbrance.

Approved, March 3, 1875. (18 Stats., p. 402.) See Title II., No. 343.

No. 137.—An act to enable the people of Colorado to form a constitution and State government, and for the admission of the said State into the Union on an equal footing with the original States.

* * * * *

SEC. 7. That sections numbered sixteen and thirty-six in every township, and where such sections have been sold or otherwise disposed of by any act of Congress, other lands, equivalent thereto, in legal subdivisions of not more than one quarter-section, and as contiguous as may be, are hereby granted to said State for the support of common schools.

SEC. 8. That, provided the State of Colorado shall be admitted into the Union in accordance with the foregoing provisions of this act, fifty entire sections of the unappropriated public lands within said State, to be selected and located by direction of the legislature thereof, and with the approval of the President, on or before the first day of January, eighteen hundred and seventy-eight, shall be, and are hereby, granted, in legal subdivisions of not less than one quarter-section, to said State for the purpose of erecting public buildings at the capital of said State for legislative and judicial purposes, in such manner as the legislature shall prescribe.

SEC. 9. That fifty other entire sections of land as aforesaid, to be selected and located and with the approval as aforesaid, in legal subdivisions as aforesaid, shall be, and they are hereby, granted to said State for the purpose of erecting a suitable building for a penitentiary or State prison in the manner aforesaid.

SEC. 10. That seventy-two other sections of land shall be set apart and reserved for the use and support of a State university, to be selected and approved in manner as aforesaid, and to be appropriated and applied as the legislature of said State may prescribe for the purpose named and for no other purpose.

SEC. 11. That all salt-springs within said State, not exceeding twelve in number, with six sections of land adjoining, and as contiguous as may be to each, shall be granted to said State for its use, the said land to be selected by the governor of said State within two years after the admission of the State, and when so selected to be used and disposed of on such terms, conditions, and regulations as the legislature shall direct: *Provided*, That no salt-spring or lands the right whereof is now vested in any individual or individuals, or which hereafter shall be confirmed or adjudged to any individual or individuals, shall by this act be granted to said State.

SEC. 12. That five per centum of the proceeds of the sales of agricultural public lands lying within said State which shall be sold by the United States subsequent to the admission of said State into the Union, after deducting all the expenses incident to the same, shall be paid to the said State for the purpose of making such internal improvements within said State as the legislature thereof may direct: *Provided*, That this section shall not apply to any lands disposed of under the homestead laws of the United States, or to any lands now or hereafter reserved for public or other uses.

SEC. 13. That any balance of the appropriations for the legislative expenses of said Territory of Colorado remaining unexpended shall be applied to and used for defraying the expenses of said convention, and for the payment of the members thereof, under the same rules and regulations and rates as are now provided by law for the payment of the territorial legislature.

SEC. 14. That the two sections of land in each township herein granted for the support of common schools shall be disposed of only at public sale and at a price not less than two dollars and fifty cents per acre, the proceeds to constitute a permanent school-fund, the interest of which to be expended in the support of common schools.

SEC. 15. That all mineral-lands shall be excepted from the operation and grants of this act.

Approved, March 3, 1875. (18 Stats., p. 474.)

No. 138.—An Act to protect ornamental and other trees on Government reservations and on lands purchased by the United States, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That if any person or persons shall knowingly and unlawfully cut, or shall knowingly aid, assist, or be employed in unlawfully cutting, or shall wantonly destroy or injure, or procure to be wantonly destroyed or injured, any timber-tree or any shade or ornamental tree, or any other kind of tree, standing, growing, or being upon any lands of the United States, which, in pursuance of law, have been reserved, or which have been purchased by the United States for any public use, every such person or persons so offending, on conviction thereof before any circuit or district court of the United States, shall, for every such offense, pay a fine not exceeding five hundred dollars, or shall be imprisoned not exceeding twelve months.

SEC. 2. That if any person or persons shall knowingly and unlawfully break or destroy any fence, wall, hedge, or gate inclosing any lands of the United States, which have, in pursuance of any law, been reserved or purchased by the United States for any public use, every such person so offending, on conviction, shall, for every such offense, pay a fine not exceeding two hundred dollars, or be imprisoned not exceeding six months.

SEC. 3. That if any person or persons shall knowingly and unlawfully break, open, or destroy any gate, fence, hedge, or wall inclosing any lands of the United States, reserved or purchased as aforesaid, and shall drive any cattle, horses, or hogs upon the lands aforesaid for the purpose of destroying the grass or trees on the said grounds, or where they may destroy the said grass or trees, or if any such person or persons shall

knowingly permit his or their cattle, horses, or hogs to enter through any of said inclosures upon the lands of the United States aforesaid, where the said cattle, horses, or hogs may or can destroy the grass or trees or other property of the United States on the said land, every such person or persons so offending, on conviction, shall pay a fine not exceeding five hundred dollars, or be imprisoned not exceeding twelve months: *Provided*, That nothing in this act shall be construed to apply to unsurveyed public lands and to public lands subject to pre-emption and homestead laws, or to public lands subject to an act to promote the development of the mining resources of the United States, approved May tenth, eighteen hundred and seventy-two.

Approved, March 3, 1875. (18 Stats., p. 481.)

No. 139.—An Act granting to railroads the right of way through the public lands of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands of the United States is hereby granted to any railroad company duly organized under the laws of any State or Territory, except the District of Columbia, or by the Congress of the United States, which shall have filed with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of one hundred feet on each side of the central line of said road; also the right to take from the public lands adjacent to the line of said road, material, earth, stone, and timber necessary for the construction of said railroad; also ground adjacent to such right of way for station-buildings, depots, machine shops, side-tracks, turn-outs, and water-stations, not to exceed in amount twenty acres for each station, to the extent of one station for each ten miles of its road.

SEC. 2. That any railroad company whose right of way, or whose track or road-bed upon such right of way, passes through any canyon, pass, or defile, shall not prevent any other railroad company from the use and occupancy of the said canyon, pass or defile, for the purposes of its road, in common with the road first located, or the crossing of other railroads at grade. And the location of such right of way through any canyon, pass, or defile shall not cause the disuse of any wagon or other public highway now located therein, nor prevent the location through the same of any such wagon road or highway where such road or highway may be necessary for the public accommodation; and where any change in the location of such wagon road is necessary to permit the passage of such railroad through any canyon, pass, or defile, said railroad company shall, before entering upon the ground occupied by such wagon road, cause the same to be reconstructed at its own expense in the most favorable location, and in as perfect a manner as the original road: *Provided*, That such expenses shall be equitably divided between any number of railroad companies occupying and using the same canyon, pass, or defile.

SEC. 3. That the legislature of the proper Territory may provide for the manner in which private lands and possessory claims on the public lands of the United States may be condemned; and where such provision shall not have been made, such condemnation may be made in

accordance with section three of the act entitled "An act to aid in the construction of a railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes, approved July first, eighteen hundred and sixty-two," approved July second, eighteen hundred and sixty-four.

SEC. 4. That any railroad company desiring to secure the benefits of this act, shall, within twelve months after the location of any section of twenty miles of its road, if the same be upon surveyed lands, and, if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a profile of its road; and upon approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office; and thereafter all such lands over which such right of way shall pass shall be disposed of subject to such right of way: *Provided*, That if any section of said road shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any such uncompleted section of said road.

SEC. 5. That this act shall not apply to any lands within the limits of any military, park, or Indian reservation, or other lands specially reserved from sale, unless such right of way shall be provided for by treaty-stipulation or by act of Congress heretofore passed.

SEC. 6. That Congress hereby reserves the right at any time to alter, amend, or repeal this act, or any part thereof.

Approved, March 3, 1875. (18 Stats., p. 482.) See Title IV., No. 406.

No. 140.—An act to provide for the sale of desert lands in Lassen County, California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any citizen of the United States, or any person of requisite age who may be entitled to become a citizen, and who has filed his declaration of intention to become such, to file a declaration with the register and the receiver of the proper land district for the county of Lassen, California, in which any desert land is situated, that he intends to reclaim a tract of desert land situated in said county, not exceeding one section, by conducting water upon the same, so as to reclaim all of said land within the period of two years thereafter; and said declaration shall be under oath and shall describe particularly said section of land, if surveyed, and, if unsurveyed, shall describe the same as nearly as possible without a survey; which said declaration shall be supported by the affidavit of at least two credible witnesses, establishing to the satisfaction of the register or receiver the fact that said lands are of the character described in this act. And at any time within the period of two years after filing said declaration, and upon making satisfactory proof of the reclamation of said tract of land in the manner aforesaid, before the register and the receiver of said land office, such person shall be entitled to enter or locate the reclaimed section, or any part thereof, in the same manner as in cases where public lands of the United States are subject to entry, at a price not exceeding one dollar and twenty five cents per acre, and shall receive a patent therefor.

SEC. 2. That all lands within said county of Lassen, exclusive of timber lands and of mineral lands, which do not produce grass, or which will not, without such reclamation, produce some agricultural crop, shall be deemed desert lands within the meaning of this act.

Approved, March 3, 1875. (18 Stats., p. 497.) See Title I., No. 272.

No. 141.—An Act granting the right of way through the public lands to construct and maintain a railroad.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the right of way through the public lands is hereby granted to Daniel P. Holland, the proprietor of the Jacksonville, Pensacola and Mobile Railroad, his associates, successors and assigns, for the construction of a railroad in the States of Florida and Alabama from the present terminus of said railroad on the Apalachicola River, in the State of Florida, through the the States of Florida and Alabama, to the city of Mobile, Alabama; and from a point on the line of said railroad to the city of Pensacola; and from a point opposite the corporate limits of the city of Jacksonville, on the Saint John's River, to the city of Saint Augustine, Florida; and the right, power, and authority are hereby granted to said Daniel P. Holland, his successors, assigns, or associates to take from the public lands adjacent to the line of said railway, to the extent of one hundred feet in width on each side of the central line of said road where it may pass through the public lands, material for the construction and maintenance thereof; and the necessary grounds for stations and depots, or other necessary places, such as turn-outs and water-stations, are hereby granted to said Daniel P. Holland, his successors or assigns, to an amount not exceeding twenty acres for each ten miles in length of main line of railroad where it may pass through the public lands: *Provided,* That within one year from the passage of this act the said Daniel P. Holland, proprietor of the Jacksonville, Pensacola and Mobile Railroad, his successors, assigns, or associates, shall file with the Secretary of the Interior his acceptance of this act and the map of the routes exhibiting the line of the road and the right to take material shall cease upon the completion of the said road.

SEC. 2. That said railroad shall be a post-route and a military road, and Congress at any time may fix rates of tariff for troops, materials of war, and mails, and may add to, alter, or amend this act.

SEC. 3. That all acts and parts of acts conflicting with this act be, and they are hereby, repealed.

SEC. 4. That if the said road shall not be completed and put in operation within five years after the passage of this act all rights herein granted shall cease and determine,

Approved, March 3, 1875. (18 Stats., p. 509.) See No. 72.

No. 142.—An Act authorizing the Wisconsin Central Railroad Company to straighten the line of their road.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the consent and approval of Congress are hereby given to the Wisconsin Central

Railroad Company to build that portion of their road which lies between Portage City and Stevens Point on the line adopted by the act of the legislature of Wisconsin, approved February tenth, eighteen hundred and seventy-five, instead of the line adopted by the act of the legislature of Wisconsin, April ninth, eighteen hundred and sixty-six, chartering the Portage and Superior Railroad Company: *Provided*, That no portion of the lands belonging to said grant situated south of Stevens Point, and which may be found outside of the ten-mile limits, measured from the modified line of said road, shall pass to said company under its grant, but such lands shall revert to the United States and become part of the public domain, to be disposed of as other public lands, and the acceptance of the provisions of this act by said company shall be held to be a relinquishment of the same; *And provided further*, That this act shall not be construed as increasing said grant, or as granting to said company and lands whatever.

Approved, March 3, 1875. (18 Stats., p. 511.)

No. 143.—An act to amend the act entitled "An act for the restoration to homestead entry and to market of certain lands in Michigan," approved June tenth, eighteen hundred and seventy-two, and for other purposes.

Re it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the act approved June tenth, eighteen hundred and seventy-two, entitled "An act for the restoration to market of certain lands in Michigan," be, and hereby is, amended so as to authorize the Secretary of the Interior to cause patents to be issued to three hundred and twenty members of the Ottawa and Chippewa Indians of Michigan, for the selections found to have been made by them, but which were not, prior to the passage of said act, regularly reported and recognized by the Secretary of the Interior and Commissioner of Indian Affairs; and the remainder of said lands not disposed of, and not valuable mainly for pine timber, shall be subject to entry under the homestead laws, for one year from the passage of this act; and the lands remaining thereafter undisposed of shall be offered for sale at a price not less than two dollars and fifty cents per acre.

SEC. 2. That all Indians who have settled upon and made improvements on section ten, in township forty-seven north, of range two east, and section twenty-four, in township forty-seven north, of range three west, Michigan, shall be permitted to enter not exceeding eighty acres each, at the minimum price of land, upon making proof of such settlement and improvement before the register of the land-office at Marquette, Michigan; and when said entries shall have been completed in accordance herewith, the remaining lands embraced within the limits of said sections shall be restored to market.

SEC. 3. That all actual, permanent, bona-fide settlers on any of the lands reserved for Indian purposes under the treaty with the Ottawa and Chippewa Indians of Michigan of July thirty-first, eighteen hundred and fifty-five, shall be entitled to enter not exceeding one hundred and sixty acres of land, either under the homestead laws or to pay the minimum price of land, on making proof of his or her settlement and continued residence before the expiration of ninety days from the passage of this act: *Provided*, That such settlers do not claim any of the

lands heretofore patented to Indians, or in conflict with the selections found to have been made by Indians referred to in the first section of this act, and shall have settled upon said lands prior to the first day of January, eighteen hundred and seventy-four.

Approved, March 3, 1875. (18 Stats., p. 516.) See No. 80 and Title X., Nos. 564, 565.

No. 144.—An act to correct a clerical error in the act granting the right of way through the public lands to the Denver and Rio Grande Railway Company, approved June eighth, eighteen hundred and seventy-two.

WHEREAS in the third session of the Forty-second Congress, the committee of conference on the disagreeing votes of the two houses on the amendments to the bill (S. 984) granting the right of way through the public lands to the Denver and Rio Grande Railway Company, submitted as part of their report the recommendation that the second proviso in the amendment of the House of Representatives adding provisoes to the end of the bill be stricken out and the following words be inserted: "*And provided further, That the said Denver and Rio Grande Railway Company is hereby recognized as a lawful corporation from the date of its incorporation under the laws of Colorado, and all the powers, privileges, and franchises by said laws conferred upon said company are hereby expressly ratified, confirmed, and legalized as existing from said date of incorporation; but beyond such recognition, ratification, and confirmation of and to said company, this act shall not be construed as affirming or denying the rights of Territories to pass laws for the incorporation of railway companies;*" which report of said committee of conference was concurred in by both Houses; and

WHEREAS in transcribing the bill, the said second proviso in the amendment of the House of Representatives was not stricken out, and the above-quoted words were not inserted and do not appear in the law upon the statute-books: Therefore,

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the said words above quoted shall be considered and taken as they were intended to be, and they are hereby made a part of said act approved June eighth, eighteen hundred and seventy-two.

Approved, March 3, 1875 (18 Stats., p. 516.) See No. 75.

No. 145.—An act to set apart a certain portion of the island of Mackinac in the Straits of Mackinac, within the State of Michigan, as a national park.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of the island of Mackinac, lying in the Straits of Mackinac, within the county of Mackinac, in the State of Michigan, as is now held by the United States under military reservation or otherwise, (excepting the Fort Mackinac and so much of the present reservation thereof as bounds it to the south of the village of Mackinac, and to the west, north and east respectively by lines drawn north and south, east and west, at a distance from the present fort flag-staff of four hundred yards,) hereby is reserved and withdrawn from settlement, occupancy, or sale under the

laws of the United States, and dedicated and set apart as a national public park, or grounds, for health, comfort, and pleasure, for the benefit and enjoyment of the people; and all persons who shall locate or settle upon or occupy the same, or any part thereof, except as herein provided, shall be considered trespassers, and removed therefrom.

SEC. 2. That said public park shall be under the exclusive control of the Secretary of War, whose duty it shall be as soon as practicable, to make and publish such rules and regulations as he may deem necessary or proper for the care and management of the same. Such regulations shall provide for the preservation from injury or spoilation of all timber, mineral deposits, natural curiosities, or wonders within said park, and their retention in their natural condition. The Secretary may in his discretion, grant leases for building purposes, of small parcels of ground, at such places in said park as shall require the erection of buildings for the accommodation of visitors for terms not exceeding ten years; all of the proceeds of said leases and all other revenues derived from any source connected with said park, to be expended, under his direction, in the management of the same and in the construction of roads and bridle paths therein. He shall provide against the wanton destruction of game or fish found within said park and against their capture or destruction for any purposes of use or profit. He also shall cause all persons trespassing upon the same after the passage of this act to be removed therefrom, and generally shall be authorized to take all such measures as shall be necessary or proper to fully carry out the objects and purposes of this act.

SEC. 3. That any part of the park hereby created shall at all times be available for military purposes, either as a parade or drill ground, in time of peace, or for complete occupation in time of war, or whenever war is expected, and may also be used for the erection of any public buildings or works: *Provided*, That no person shall ever claim or receive of the United States any damage on account of any future amendment or repeal of this act, or the taking of said park, or any part thereof, for public purposes or use.

Approved, March 3, 1875. (18 Stats., p. 517.)

No. 146.—An Act for the relief of settlers on lands within railroad limits.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where any actual settler who shall have paid for any lands situate within the limits of any grant of lands by Congress to aid in the construction of any railroad, the price of such lands being fixed by law at double minimum rates, and such railroad lands having been forfeited to the United States and restored to the public domain for failure to build such railroad, such person or persons shall have the right to locate, on any unoccupied lands, an amount equal to their original entry, without further cost, except such fees as are now provided by law in pre-emption cases: *Provided*, That when such location is upon double minimum lands, one-half the amount only shall be taken.

Approved, March 3, 1875. (18 Stats., p. 519.) See No. 120 and Title III., Nos. 394, 422.

II. ABSTRACT OF LOCAL AND PRIVATE ACTS AND RESOLUTIONS

PASSED BY CONGRESS FROM MARCH 4, 1869, TO MARCH 3, 1875, INCLUSIVE.

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PART THIRD.

DECISIONS, OPINIONS, AND INSTRUCTIONS.

TITLE I.—DISPOSAL OF THE PUBLIC LANDS.

No. 265.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D C , June 17, 1875.

The following is communicated in reference to the manner of acquiring title to the public lands under different laws of Congress :

There are two classes of public lands, the one class at \$1.25 per acre, which is designated as *minimum*, and the other at \$2.50 per acre, or *double minimum*.

Title may be acquired by purchase at public sale, or by ordinary "private entry," and in virtue of the pre-emption, homestead, and timber-culture laws.

BY PURCHASE AT PUBLIC SALE.

1. This may be done where lands are "offered" at public auction to the highest bidder, either pursuant to proclamation by the President or public notice given, in accordance with directions from the General Land-Office.

BY "PRIVATE ENTRY" OR LOCATION.

2. The lands liable to disposal in this manner are those which were offered at public sale, but were not then sold, and which have not since been reserved or otherwise withdrawn from market. In this class of offered and unreserved public lands, the following steps may be taken to acquire title :

[No. 265 is a re-print of the circular of August 30, 1872, with a few verbal changes and several additions consisting of the leading instructions under the soldiers' and sailors' homestead laws, the Indian homestead provisions and the timber-culture act of March 13, 1874, with the requisite references to the Revised Statutes.

It is not deemed necessary to re-publish the circular of August 30, 1872, as its language is given herein with foot-notes where important changes are made by this circular.]

CASH PURCHASES.

3. The applicant will present a written application to the register for the district in which the land desired is situated, describing the tract he wishes to purchase, giving its area. Thereupon the register, if the tract is vacant, will so certify to the receiver, stating the price, and the applicant must then pay the amount of the purchase money.

The receiver will then issue his receipt for the money paid, in duplicate, giving to the purchaser a duplicate receipt, and at the close of the month the register and receiver will make returns of the sale to the General Land-Office, from which, when the proceedings are found regular, a patent or complete title will be issued; and on surrender of the duplicate receipt, such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington or by the register at the district land office.

LOCATIONS WITH WARRANTS.

4. Applications must be made as in cash cases, but must be accompanied by a warrant duly assigned as the consideration for the land; yet where the tract is \$2.50 per acre, the party, in addition to the surrendered warrant, must pay in *cash* \$1.25 per acre, as the warrant is in satisfaction of only so many acres, at \$1.25 per acre, or furnish a warrant of such denomination as will, at the legal value of \$1.25 per acre, cover the rated price of the land. For example: a tract of 40 acres of land, held at \$2.50 per acre, can be paid for with a warrant calling for 40 acres and the payment of \$50 in cash, or by surrendering an 80-acre warrant for the same—the 40 acres to be in full satisfaction for the said location. Or a tract of 80 acres, rated at \$2.50 per acre, can be paid for by the surrender of two eighty-acre warrants. If there is a small excess in the area of the tract over the quantity called for on the face of the warrant in any case, such excess may be paid for in money.

A duplicate certificate of location will then be furnished the party, to be held until the patent is delivered, as in cases of cash sales.

The following fees are chargeable by the land officers, and the several amounts must be *paid at the time of location*:

For a 40-acre warrant, 50 cents each to the register and receiver—total,	\$1.00.
For a 60-acre warrant, 75 cents	1.50.
For an 80-acre warrant, \$1.00	2.00.
For a 120-acre warrant, \$1.50	3.00.
For a 160-acre warrant, \$2.00	4.00.

AGRICULTURAL-COLLEGE SCRIP

5. This scrip may be used—

First. In the location of lands at "*private entry*," but when so used is only applicable to lands not mineral which may be subject to private entry at \$1.25 per acre, yet is restricted to a technical "*quarter section*"—that is, land embraced by the quarter-section lines indicated on the official plats of survey; or it may be located on a *part* of a "*quarter-section*," where such part is taken as in full for a quarter; but it cannot be applied to different subdivisions to make an area equivalent to a quarter section. The manner of proceeding to acquire title with this class of paper is the same as in cash and warrant cases, the fees to be paid being the same as on warrants. The location of this scrip at *private entry* is restricted to *three sections in each township* of land.

Second. In payment of pre-emption claims, in the same manner and under the same rules and regulations as govern the application to pre-emptions of military land warrants; this, too, without regard to the limitation as to the quantity located in a township or in any one State.

Third. In payment for homesteads commuted under section 2301 of the Revised Statutes of the United States, copy attached.

PRE-EMPTIONS ADMISSIBLE TO THE EXTENT OF ONE QUARTER SECTION, OR ONE HUNDRED AND SIXTY ACRES.

6. These are admitted under sections 2257 to 2288 of the Revised Statutes of the United States, copies of which sections are hereto attached, marked No. 1, upon "offered" and "unoffered" lands, and upon any of the unsurveyed lands belonging to the United States to which the Indian title is extinguished, although in the case of unsurveyed lands no definite proceedings can be had as to the completion of the title until after the surveys shall have been extended and officially returned to the district land office.

The pre-emption privilege is restricted to heads of families, widows, or single men over the age of twenty-one, who are citizens of the United States, or who have declared their intention to become citizens, as required by the naturalization laws. This does not include Indians, except such as have ceased their tribal relations, and been declared citizens by treaties or acts of Congress.

7. The right of pre-emption, formerly extended by act of Congress of March 3, 1853, for one quarter section, or 160 acres, at the price of \$2.50 per acre, to the alternate United States or reserved sections along the line of railroads, is continued by the Revised Statutes, sections 2257, 2259, and 2279.

8. Section 2281 thereof protects the rights of settlers on sections along the line of railroads, where settlement existed prior to withdrawal, and in such cases allows the land to be taken by the pre-emptors at \$1.25 per acre, but requires that they shall file the proper notices of their claims, and make proof and payment as in other cases.

9. Where the tract is "*offered*" land, the party must file with the district land office his declaratory statement as to the fact of his settlement within thirty days from the date of said settlement, and within one year from date of settlement must appear before the register and receiver and make proof of his actual residence on, and cultivation of, the tract, and secure the same by paying *cash*, or locating thereon military bounty land warrants, or agricultural-college scrip, according to law.

10. Where the tract has been surveyed and *not* offered at public sale, the claimant must file his declaratory statement within three months from date of settlement, and make proof and payment within thirty months after the expiration of the three months allowed for filing his declaratory notice; or in other words, within thirty-three months from date of settlement.

11. Where settlements are made on *unsurveyed* lands, settlers are required, within three months after the date of the receipt at the district land office of the approved plat of the township embracing their claims, to file their declaratory statement with the register of the proper land office, and thereafter to make proof and payment for the tract within thirty months from the expiration of said three months.

When two or more settlers on unsurveyed land are found upon survey to be residing upon, or to have valuable improvements upon, the same smallest legal subdivision, they may make joint entry of such tract, and separate entries of the residue of their claims. This joint entry may be made in pursuance of contract between the parties, or without it. (Revised Statutes, sec. 2274.)

12. Should the settler in either of the aforesaid cases die before establishing his claim within the period limited by law, the title may be perfected by the executor, administrator, or one of the heirs, by making the requisite proof of settlement and paying for the land; the entry to be made in the name of "the heirs" of the deceased settler; and the patent will be issued accordingly. The legal representatives of the deceased pre-emptor are entitled to make the entry at any time within the period to which the pre-emptor would be entitled if living.

Section 2261 of the Revised Statutes prohibits the second filing of a declaratory statement (a) by any pre-emptor qualified at the date of his first filing where said filing has been in all respects legal. Where the first filing, however, is illegal from any cause, he has the right to make a second and legal filing. (b)

LAWS EXTENDING THE HOMESTEAD PRIVILEGE.

13. The laws extending the homestead privilege, embraced in sections 2289 to 2317 of the Revised Statutes—copies attached, marked No. 2—give to every citizen, and to those who have declared their intention to become citizens, the right to a homestead on *surveyed* lands. This is conceded to the extent of one quarter section, or 160 acres, or a half quarter section, or 80 acres, the former in cases where the land desired is embraced in the class of lower priced lands held by law at \$1.25 per acre, when disposed of to cash purchasers; the latter where it is of the class of higher priced lands held at \$2.50 per acre when so disposed of.

14. To obtain homesteads, the party must, in connection with his application, make an affidavit before the register or receiver that he is over the age of twenty-one, or the head of a family; that he is a citizen of the United States, or has declared his intention to become such; and that the entry is made for his exclusive use and benefit, and for actual settlement and cultivation; and must pay the legal fee and that part of the commissions which is payable when the entry is made, as given in tables below.

15. Where the applicant has made actual settlement on the land he desires to enter, but is prevented by reason of bodily infirmity, distance, or other good cause, from personal attendance at the district land office, the affidavit may be made before the clerk of the court for the county within which the land is situated, under section 2294 of the Revised Statutes. (c)

(a) Upon offered lands (circular of August 30, 1872).

(b) Upon unoffered lands (circular of August 30, 1872).

(c) 16. The amendatory act of 21st March, 1864, U. S. Statutes, vol. 13, page 35, relaxes the requirements of personal attendance at the district office to persons in the military or naval service *where the party's family, or some member, is residing on the land* that it is desired to enter, and upon which a *bona-fide* improvement and cultivation have been made. In such cases the said act of 1864 allows the beneficiary to make the affidavit before

16. On compliance by the party with the foregoing requirements, the receiver will issue his receipt for the fee, and that part of the commissions paid, a duplicate of which he will deliver to the party. The matter will then be entered on the records of the district office, and reported to the General Land-Office.

17. An inceptive right is vested in the settler by such proceedings, and upon faithful observance of the law in regard to settlement and cultivation for the continuous term of five years, and at the expiration of that time, or within two years thereafter, upon proper proof to the satisfaction of the land officers, and payment to the receiver, of that part of the commissions remaining to be paid, as given in tables below, the receiver issuing his receipt therefor, the register will issue his certificate, and make proper returns to this Office as the basis of a patent or complete title for the homestead.

NOTE.—The law is specific in requiring final proof to be made within *two* years after the expiration of the five years.

In making final proof, it is required that the homestead party shall appear in person at the district land office, and there make the affidavit required of him by law in support of his claim. Where, from physical disability, distance, or other good cause, the *witnesses* of said party cannot attend in person at the district office, their testimony in support of the claim may be taken where they reside, before an officer authorized by law to administer oaths.

Their testimony must state satisfactorily the reason of their inability to attend at the district office; and the credibility and responsibility of the witnesses must be certified by the officiating magistrate, whose official character must be authenticated under seal.

The corroborating testimony thus prepared must be deposited with the register and receiver, and filed with the affidavit of the homestead party, and the decision to the register and receiver indorsed thereon, as a preliminary to the transmission of the same to the General Land-Office.

18. Where a homestead settler dies before the consummation of his claim, the widow, or in case of her death the heirs, may continue the

the officer commanding in the branch of service in which he may be engaged, and the same may be filed, by the wife or other representative of the absentee, with the register, together with the homestead application.

His claim in that case will become effective from the date of filing, provided the required fee and commissions accompany the same; but immediately upon his discharge he must enter upon the land and make it his *bona-fide* home, as required by the original act of 20th May, 1862. The 25th section of the act of 15th July, 1870, so far modifies the original homestead act as to allow officers, soldiers, and sailors who have served in the Army or Navy of the United States for ninety days during the war of the rebellion, and remained loyal to the Government, to enter 160 acres instead of 80 acres of double minimum lands. In all other respects the requirements of the original and amendatory acts remain in force, *actual settlement and cultivation being in no case dispensed with*. Special affidavits are required in such cases. Congress has also enacted that any alien of the age of 21 years and upward who has entered or shall enlist in the armies of the United States, and be honorably discharged therefrom, shall not be required to make any declaration of intention to become a citizen of the United States, and may, upon his petition, and on proof of honorable military service, be admitted to full citizenship after not less than one year's residence in the United States. (This was in circular of August 30, 1872.)

settlement and cultivation, and obtain title upon requisite proof at the proper time. If the widow proves up, the title passes to her; if she dies before proving up and the heirs make the proof, the title will vest in them.

Where both parents die leaving infant heirs, the homestead may be sold for cash for the benefit of such heirs, and the purchaser will receive title from the United States.

19. The sale of a homestead claim by the settler to another party before completion of title is not recognized by this Office, and not only vests no title or equities in the purchaser, but would be *prima facie* evidence of abandonment, and might give cause for cancellation of the claim.

A party may relinquish his claim, but on his doing so the land reverts to the Government. The party so desiring should surrender the duplicate receipt issued for the entry, with his written relinquishment of the same endorsed thereon, to the register and receiver of the proper district land office. If the duplicate receipt has been lost, he should submit to those officers a written relinquishment of the entry, in which he should state the fact of the loss of the duplicate receipt, and which should be duly signed and acknowledged. The register and receiver will report the relinquishment, as any other evidence of abandonment, with their opinion thereon, for the action of this Office.

Where application is made to contest the validity of a homestead entry on the ground of abandonment, the party must file his affidavit with the district land officers, setting forth the allegations on which his application is founded, describing the tract, and giving the name of the settler. Upon this the officers will set apart a day for a hearing, giving all the parties in interest due notice of the time and place of trial.

After the trial, the land officers will transmit the testimony, with their joint report, for the action of this Office.

The expenses incident to such contest must be defrayed by the contestant, and no entry of the land can be made until the district officers have received notice from this Office of the cancellation of the entry covering the same; nor does an informant obtain any privileges thereby. Such person must, if he desires the land, by proper diligence ascertain when notice of cancellation is received by the register and receiver, and *then* make formal written application for the tract; the land, after reception by said officers of notice of cancellation, being always open to the *first legal applicant*, unless withdrawn from entry by competent authority.

20. As the law allows but one homestead privilege, a settler relinquishing or abandoning his claim cannot thereafter make a second entry; but where, a party having made one entry, it is cancelled as invalid, for some other reason, he is not thereby debarred from entering again.

Where an individual has made settlement on a tract and filed his pre-emption declaration therefor, he may change his filing into a homestead, if he continues in good faith to comply with the pre-emption laws until the change is effected. If, however, the land has become double minimum in price, he cannot, unless entitled as a soldier or sailor, under section 2304 of the Revised Statutes, commute for more than a "half-quarter section," or 80 acres.

21. If the homestead settler does not wish to remain five years on his tract, the law permits him to pay for it with cash or warrants, or agri-

cultural-college scrip, upon making proof of settlement and cultivation for a period not less than six months from the date of entry to the time of payment.

This proof of actual settlement and cultivation must be the affidavit of the party, made before the district officers, corroborated by the testimony of two credible witnesses.

22 There is another class of homesteads designated as "adjoining farm homesteads." In these cases the law allows an applicant *owning* and *residing* on an *original* farm to enter other land lying contiguous thereto, which shall not with such farm, exceed in the aggregate 160 acres. Thus, for example, a party owning or occupying 80 *acres*, may enter 80 additional of \$1.25, or 40 acres of \$2.50 land. Or, suppose the applicant to own 40 *acres*, then he may enter 120 acres at \$1.25, or 40 at \$1.25 with 40 at \$2.50, if both classes of land should be found contiguous to his original farm.

In applying for an entry of this class, the party must make affidavit describing the tract which he owns and upon which he resides as his original farm. In making final proof, it is not required that he should prove actual residence on the separate tract entered; but if he does not, it must appear from the proof adduced that he has continued for the period required by law to reside upon and cultivate the original farm tract, and has *bona fide* made use of the entered tract as a part of the homestead, inclosing, cultivating, or otherwise improving the same.

23. *Provisions for the benefit of soldiers and sailors of the late war, their widows and minor orphan children.*—Sections 2304, 2305, 2306, 2307, 2308, and 2309 of the Revised Statutes, for the benefit of soldiers and sailors, their widows and minor orphan children, provide—

1st. In section 2304, that every soldier and officer of the Army, and every seaman, marine, and officer of the Navy, who served for not less than ninety days in the Army or Navy of the United States "during the recent rebellion," and who was honorably discharged, and has remained loyal to the Government, may enter, under the provisions of the homestead law, 160 acres of the public land, to be taken, if desired, from the class of double minimum lands.

2d. In section 2305, that the time of his service, or the whole term of his enlistment, if the party was discharged on account of wounds or disability incurred in the line of duty, shall be deducted from the period of five years, during which, as per section 2291, the claimant must, to perfect title, reside upon and cultivate the entered tract, but with the proviso that the party shall in every case reside upon, improve, and cultivate his homestead for a period of at least one year after he shall have commenced his improvements.

3d. That any person entitled to the benefits of section 2304, who had, prior to the 22d June, 1874, made a homestead entry of less than 160 acres, may enter an additional quantity of land sufficient to make with the previous entry 160 acres.

4th. That the widow, if unmarried, or in case of her death or marriage, then the minor orphan children, of a person who would be entitled to the benefits of section 2304, may enter lands under its provisions, with the additional privilege accorded, that if the person died during his term of enlistment, the widow or minor children shall have the benefit of the whole term of enlistment.

5th. That any person entitled to the benefit of section 2304 may file his claim for a tract of land through an agent, and shall have six months

thereafter within which to make his entry and commence his settlement and improvement upon the land.

24. The following is the course of proceedings for parties to avail themselves of the benefits of these sections of the Revised Statutes in making homestead entries:

1st. On the party producing the proper proof of his right to do so, immediate entry of the tract desired may be made; but if the party so elect, he may file a declaration to the effect that he claims a specified tract of land as his homestead, and that he takes it for actual settlement and cultivation. The register and receiver will number the declarations so filed in a separate series, according to the order of filing, enter them on their records, and with their monthly returns forward an abstract, to embrace all declarations of this class filed with them during the month. Thereafter, at any time within six months from the date of filing, the party may come forward, make his entry of the land, and commence his settlement and improvement. Should the party present his declaration through an agent, as authorized by section 2309, said agent must produce a duly executed power of attorney from the principal desiring to make the entry, who will be bound by the selection his agent may make the same as though made by himself. Failure of the party to make entry of the tract filed upon by himself, or agent, within six months from the date of filing, will be regarded as an abandonment, and a forfeiture of his right to enter; but in any case where the party acted in good faith, and the failure resulted from sickness, misfortune, or any insurmountable cause, he may submit, through the register and receiver of the proper district land office, his affidavit setting forth that such was the case, with the reasons of his failure, and that he has not attempted by sale, barter, or in any way whatever, to alienate for gain or profit his claim or right under the filing, or to the land covered thereby. If the showing so made should be found satisfactory, the register and receiver will be instructed to permit him to enter as a homestead the same tract for which his declaration was filed, if no valid adverse right to that tract shall have intervened, or any other tract subject to entry, in case a valid adverse right shall have intervened to the tract filed upon.

2d. The claims of widows and minor orphan children may be initiated by declaration, as above. Minor orphan children can act only by their duly-appointed guardians, who must file certified copies of the powers of guardianship, which must be transmitted to this Office by the registers and receivers with their abstracts of declarations. The law does not require, as a condition to enjoying its benefits, that the party should first file a declaratory statement, and, as before stated, immediate entry may be made.

3d. Applications for additional entries must be for a quantity which, with the original entry, will not exceed one hundred and sixty acres.

Where the party's first entry has been consummated, the register and receiver will require him to make application and affidavit, in the forms prescribed, (Nos. 16 and 17,) and to pay the same fee and commissions as in cases of original entry; the receiver will issue his receipt for the money paid, and these papers will receive the current date and the proper numbers in their homestead series. Then, to complete the transaction—it being an object, for the convenience of business, that the additional entry papers, and the final papers therefor, in such cases, shall be kept separate and distinct—the party will make payment of

the usual final commissions on the entered tract, for which the receiver will issue his receipt; the register will thereupon issue his final certificate, for the additional tract, (form No. 18;) the receipt and certificate to bear their proper number in the final homestead series, likewise a reference to the original entry and to the final certificate thereon, by their number, and also by their district, where the party's first entry shall have been made in a different district.

In case the party has not made proof on his original homestead entry when he applies for additional land, he will be allowed to make the additional entry on proper application and affidavit, as above stated, and paying the usual fee and commissions, for which the receiver will issue his receipt; the papers to receive their proper numbers in the homestead series, with a reference thereon to the original entry. Thereafter, when the party shall make final proof on the original entry, he will be required to pay the final commissions on both entries, when a final receipt will be issued for the money, and thereupon a final certificate issued to call both for the tract in the original entry and the additional tract. On these papers the register and receiver will make a reference to the original and the additional entry, and on them one patent will issue for both; yet where it happens that the original entry and the additional entry are made in different land districts, this rule must be departed from, so far as regards the issuing of one final certificate and receipt for both.

25. The following proof will be required of parties applying for the benefits of these sections, in addition to the prescribed affidavit of the applicant:

1st. Certified copy of certificate of discharge, showing when the party enlisted and when he was discharged; or, if this cannot be procured, then the affidavits of two respectable, disinterested witnesses, corroborative of the allegations contained in the prescribed affidavit (form No. 14) on these points.

2d. In case of widows, the prescribed evidence of military service of the husband, as above, with affidavit of widowhood.

3d. In case of minor orphan children, in addition to the prescribed evidence of military service of the father, proof of death or marriage of the mother. Evidence of death may be the testimony of two witnesses or certificate of a physician duly attested. Evidence of marriage may be certified copy of marriage certificate, or of the record of same, or testimony of two witnesses to the marriage ceremony.

26. The register and receiver will be allowed to charge one dollar each for receiving and filing the initiatory declaration of the parties in cases where such declarations are filed. This fee the receiver will account for in the usual manner, indicating the same in his accounts as fees for "homestead declarations," which will be charged against the maximum of \$3,000 now allowed by law. In the States and Territories for which 50 per centum additional is allowed by the twelfth subdivision of section 2238 of the Revised Statutes, the additional allowance will apply to the fee herein named, viz: California, Oregon, Washington, Nevada, Colorado, Idaho, New Mexico, Arizona, Utah, Wyoming, and Montana.

27. *Provisions for the benefit of Indians.*—The 15th and 16th sections of the act of March 3, 1875, (copy attached, No. 4,) extends the benefits of the homestead act of May 20, 1862, and the acts amendatory thereof, (now embodied in sections 2290, 2291, 2292, and 2295 to 2302,

inclusive, of the Revised Statutes,) to any Indian, born in the United States, who is the head of a family, or who has arrived at the age of twenty-one years, and who has abandoned, or may hereafter abandon, his tribal relations, with the exception that the provisions of the eighth section of said act of 1862, (section 2301 of the Revised Statutes,) shall not be held to apply to entries made thereunder, and with the proviso that the title to lands acquired by any Indian by virtue thereof shall not be subject to alienation or incumbrance, either by voluntary conveyance, or the judgment, decree, or order of any court, and shall be and remain inalienable for a period of five years from the date of the patent issued therefor.

An Indian desiring to enter public land under this act must make application to the register and receiver of the proper district land office; also an affidavit setting forth the fact of his Indian character; that he was born in the United States; that he is the head of a family, or has arrived at the age of twenty-one years; that he has abandoned his tribal relations and adopted the habits and pursuits of civilized life, (form No. 19,) and this must be corroborated by the affidavits of two or more disinterested witnesses, (form No. 20.)

If no objection appear, the register and receiver will then permit him to enter the tract desired according to existing regulations, so far as applicable, under the homestead law, the register writing across the face of the application (form No. 10) the words "Indian homestead—act of March 3, 1875;" they will note the entry on their records and make returns thereof to this Office, with which they will send the affidavits submitted. It will be observed that the provisions of the eighth section of the act of May 20, 1862, (section 2301 of the Revised Statutes,) which admit of the commuting of homestead to cash entries, do not apply to this class of homesteads.

28. All lands obtained under the homestead laws are exempt from liability for debts contracted prior to the issuing of patent therefor.

29. For homestead entries on lands in Michigan, Wisconsin, Iowa, Missouri, Minnesota, Kansas, Nebraska, Dakota, Alabama, Mississippi, Louisiana, Arkansas, and Florida, fees are to be paid according to the following table:

Acres.	Price per acre.	Commissions.		Fees.	Total fees and commissions.
		Payable when entry is made.	Payable when certificate issues	Payable when entry is made.	
160	\$1 25	\$4 00	\$4 00	\$10 00	\$18 00
80	1 25	2 00	2 00	5 00	9 00
40	1 25	1 00	1 00	5 00	7 00
80	2 50	4 00	4 00	10 00	18 00
40	2 50	2 00	2 00	5 00	9 00

NOTE.—Where entries are made on \$2.50 lands by officers, soldiers, and sailors, under section 2304 of the Revised Statutes, double the amount of the above commissions must of course be paid; that is, for 160 acres of \$2.50, \$8 at the date of entry, and \$8 upon proving up.

By section 2303 of the Revised Statutes the public lands in five of the above States, viz: Alabama, Mississippi, Louisiana, Arkansas, and Florida, are not subject to disposal in any other manner than according

to the provisions of the homestead laws. In addition to the States and Territories named, the above rates will apply to Ohio, Indiana, and Illinois, if any vacant tracts can be found liable to entry in these three States, where but very few isolated tracts of public land remain undisposed of.

30. In the Pacific and other political divisions, viz : on lands in California, Nevada, Oregon, Colorado, New Mexico, and Washington, and in Arizona, Idaho, Utah, Wyoming, and Montana, the commissions and fees are to be paid according to the following table :

Acres.	Price per acre.	Commissions.		Fees.	Total fees and commissions.
		Payable when entry is made.	Payable when certificate issues.	Payable when entry is made.	
160	\$1 25	\$6 00	\$6 00	\$10 00	\$22 00
80	1 25	3 00	3 00	5 00	11 00
40	1 25	1 50	1 50	5 00	8 00
80	2 50	6 00	6 00	10 00	22 00
40	2 50	3 00	3 00	5 00	11 00

The note to the table under the 29th head applies also to this table of rates.

LAWS TO PROMOTE TIMBER CULTURE.

31. The timber-culture act of March 13, 1874, (copy attached, No. 3,) amendatory of the act of March 3, 1873, (sections 2464 to 2468 of the Revised Statutes,) is to the following effect :

1. The privilege of entry under this act is confined to persons who are heads of families, or over twenty-one years of age, and who are citizens of the United States, or have declared their intention to become such ;

2. The affidavit required for initiating an entry under this act (Form No 22) may be made before the register or receiver of the district office for the land district embracing the desired tract, or before some officer authorized to administer oaths in that district, who is required by law to use an official seal ;

3. Not more than one quarter of any one section can be entered under this act ;

4. The privilege of making more than one entry thereunder is confined to such parties as shall enter, in each and every instance, a fractional subdivision of less than 40 acres, and the aggregate area of such entries shall not exceed 160 acres ;

5. The ratio of area required to be broken, planted, &c., is, in all cases initiated under the first section of this act, one-fourth of the land embraced in the entry ;

6. One-fourth part of the area required to be devoted to timber must be broken within one year from date of entry ; one-fourth part more within two years from date of entry ; and the remaining one-half within three years from date of entry ;

7. One-fourth part of the area required to be devoted to timber must be planted within two years from date of entry ; one-fourth part more within three years from date of entry ; and the remaining one-half within four years from date of entry ;

8. The trees are required to be not more than twelve feet apart each way, and the same are required to be protected, cultivated, and kept in

a healthy growing condition for eight years next succeeding the date of entry ;

9. If, at the expiration of the said eight years, or at any time within five years thereafter, the person making the entry, or, if he or she be dead, his or her heirs or legal representatives, shall prove by two credible witnesses the fact of such planting, cultivation, &c., of the said timber for not less than the said period of eight years, he, she, or they shall receive a patent for the land embraced in said entry ;

10. In case of the death of a person who, having entered a quarter-section, has complied with the provisions of this act for the period of three years—that is to say, who has broken ten acres the first year, ten acres the second year, and twenty acres the third year ; and who has planted ten acres with timber the second year, and ten acres the third year—then, and in that case, his or her heirs or legal representatives shall be permitted, at their option, to continue to comply with the provisions of this act during the unexpired portion of the eight years, and thereupon receive a patent for said quarter section ; or, on making proper proof of the compliance of the deceased settler with the requirements of the act for the said period of three years, they shall receive, without delay, a patent for forty acres of said quarter section, upon the condition that they relinquish to the United States all claim to the remainder of the land embraced in such entry ;

11. If at any time after not less than one year from the date of entry under the first section of this act, and prior to the issue of a patent therefor, the claimant shall fail to do the breaking and planting required by this act, or any part thereof, or shall fail to cultivate, protect, and keep in good condition such timber, then, and in that event, such land shall become liable to a contest, in the manner provided in homestead cases ; and upon due proof of such failure, the entry shall be cancelled and the land become again subject to entry under the homestead laws, or by some other person under the provisions of this act ;

12. Each and every homestead settler, at any time after the end of the third year of his or her residence, who, in addition to the settlement and improvements required by the homestead laws, shall have had under cultivation for two years one acre of timber, (the trees thereon being not more than twelve feet apart each way, and in a good thrifty condition,) for each and every sixteen acres of said homestead, shall, upon due proof of such fact by two credible witnesses, receive his or her patent for said homestead ;

13. No land acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of final certificate therefor ;

14. The fees for all entries under this act shall be ten dollars, and the commission of registers and receivers on all entries (irrespective of area) shall be four dollars (two dollars to each) at the date of entry, and a like sum at the date of final proof ;

15. No distinction is made, as to area or the amount of fee and commissions, between minimum and double-minimum lands ; a party may enter 160 acres of either, on payment of the prescribed fee and commissions ;

16. The fifth section of the act entitled “ An act in addition to an act to punish crimes against the United States, and for other purposes,” approved March 3, 1857, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

17. Parties who may have already made entries under the timber-culture act of March 3, 1873, of which this is amendatory, shall be permitted to continue and complete the same in the manner and under the conditions prescribed by this act.

32. Pursuant to the foregoing provisions, the following regulations will be observed, viz:

First. The register and receiver will restrict entries under this act to some one "technical quarter section" in any section of public land which is wholly prairie and naturally devoid of timber, and hence, subject to the operation of the act, which may be either the northeast quarter, southeast quarter, northwest quarter or southwest quarter, as the first legal applicant for a timber-culture entry in such section may elect. Before allowing any entry applied for, they will, by a careful examination of the plat and tract books with reference to any previous entry or entries within the limits of the same section, satisfy themselves that the desired entry is admissible under this rule.

Second. In the case of an application for a fractional subdivision containing less than forty acres, they will require the applicant to state in his affidavit that he has, or has not, as the case may be, made a previous entry of a similar fractional subdivision. If he shall have made one or more such previous entries, they will require him to exhibit his duplicate receipts or patents therefor, and will note the same by number, acres, district, and description of the land, upon the application presented thus: "Previous entry No. —, [Description,] — acres, — District."

Third. When they shall have satisfied themselves that the land applied for is properly subject to such entry, they will require the party to make affidavit, (Form No. 22,) and to pay the fee and that part of the commissions payable at the date of entry, and the receiver will issue his receipt therefor, in duplicate, giving the party a duplicate receipt. They will number the entry in its order, in a separate series of numbers, unless they have already a series under the act of March 3, 1873, to which this act is amendatory, in which case they will number the entry as one of that series; they will note the entry on their records, and report it in their monthly returns, sending up all the papers therein, with an abstract of the entries allowed during the month under this act.

Fourth. The fee and commissions in this class of entries the receiver will account for in the usual manner, indicating the same as fees and commissions on timber-culture entries, which will be charged against the maximum of \$3,000 now allowed by law.

Fifth. When a homestead party claims a patent for his homestead entry under the fourth section of this act, the register and receiver will require him to make affidavit, according to Form No. 23, and proof, according to Form No. 24, which must show that he has resided upon and cultivated the tract for not less than three years, in addition to the facts that the land is prairie in character, and that he has cultivated timber thereon, as required to bring the case within the provisions of said fourth section. This being done, and the proper commissions paid, the receiver will issue his receipt for the money, and the register his final certificate for the entry, (Form No. 25,) the papers to be numbered in the regular final homestead series.

Sixth. In all cases under this act, it will be required that trees shall be cultivated which shall be of the class included in the term "timber," the cultivation of shrubbery and fruit-trees not being sufficient.

PRESENTATION OF APPEALS.

33. Any party aggrieved by the rejection of his claim has a right to appeal from the decision of the register and receiver to the Commissioner of the General Land-Office. Such appeal, however, with the reasons therefor, must be filed with the land officers within thirty days from the date of their decision, accompanied by the rejected papers, if any; also, with any argument the party desires to file. These papers will then be forwarded to the Commissioner by the district land officers, for review and decision. Their report should set forth the nature of the claim, whether homestead, pre-emption, timber culture, railroad, mineral, swamp, or other State selection, with the names of parties, description of land, number of filing, entry, list or selection, and date of hearing.

No appeal will be entertained unless sent up through the district land office.

The party may still further appeal from the decision of the Commissioner of the General Land-Office to the Secretary of the Interior. This appeal must be taken within sixty days after service of notice on the party. It may be filed with the district land officers, and by them forwarded, or it may be filed with the Commissioner, and must recite the points of exception.

If not appealed, the decision is by law made final. (See section 2273 of the Revised Statutes.) After appeal, thirty days are usually allowed for filing arguments, and the case is then sent to the Secretary, whose decision is final and conclusive.

REGISTERS' AND RECEIVERS' RETURNS.

34. Within three days from the close of each month the district land officers are required to make out and transmit to the General Land-Office a statement of the business of their respective offices for the preceding month.

These reports are in the form of abstracts of pre-emption declarations and of soldiers' declarations filed, abstracts of lands sold, abstracts of homesteads entered, abstracts of timber culture entries allowed, abstracts of military bounty land warrants and of agricultural-college scrip located, accompanied by the certificates of purchase, receiver's receipts, homestead and timber culture applications and affidavits, military bounty land warrants and agricultural-college scrip surrendered as satisfied, and the certificates of location thereof.

The abstracts, after being carefully examined by the register and receiver, are to be certified by them as correct and as in conformity with the papers in the entries or locations embraced therein, and with their records, which papers, abstracts, and records must agree with each other.

The receiver is required also to render promptly a *monthly account of all the moneys received*, showing the balance due the Government at the close of each month.

At the end of every *quarter* he must also transmit a *quarterly account* as receiver; upon the several accounts an adjustment is here made and submitted to the Treasury Department for final settlement.

He must also render a quarterly disbursing account of all moneys expended.

The receiver is required to deposit the moneys received by him at

some depository designated by the Secretary of the Treasury when the amount on hand shall have reached the sum of *two thousand dollars*; and in no case is he authorized, without special instructions, to hold a larger amount in his hands.

35. It is the duty of the registers and receivers to be in attendance at their offices, and give proper facilities and information to persons applying for lands.

36. A list of all the district land offices in the United States is hereto annexed.

37. Laws and instructions relating to mining-claims form the subject of a separate circular. Lands bearing "*gold, silver, cinnabar, lead, tin, copper, or other valuable deposits*," are not subject to disposal under the homestead and pre-emption laws.

38. Registers and receivers of the land offices are not authorized by law to make any charge for their services in accepting or entering pre-emption or homestead claims other than such as are herein set forth.

39. By section 2242 of the Revised Statutes it is, among other things, provided that upon satisfactory proof that either of said officers, or any other officer, has charged or received fees or other rewards not authorized by law, he shall forthwith be removed from office.

S. S. BURDETT,

Commissioner of the General Land Office.

[No. 1.]

[Extract from the Revised Statutes, Sections 2257 to 2288 inclusive.]

[No. 2.]

[Extract from the Revised Statutes, Sections 2289 to 2317 inclusive.]

[No. 3.]

[Copy of Act to Encourage the Growth of Timber on Western Prairies. Approved March 13, 1874. Part II. No. 103.]

[No. 4.]

[Sections 15 and 16 of Act making Appropriations to Supply Deficiencies. Approved March 3, 1875. Part II. No. 136.]

[No. 5.]

\$———

LAND OFFICE AT ———, ———,

Date, ———, 187—.

Mr. ——— has this day paid ——— dollars, the register's and receiver's fees, to file a declaratory statement, the receipt whereof is hereby acknowledged.

———, Receiver.

No. —

Mr. —, having paid the fees, has this day filed in this office his declaratory statement, No. —, for — of section —, in township —, of range —, containing — acres, settled upon —, 18—, being — offered.

—, Register.

[No. 6.]

DECLARATORY STATEMENT FOR CASES WHERE THE LAND IS NOT SUBJECT TO PRIVATE ENTRY.

I, —, of —, being —, have, on the — day of —, A. D. 18—, settled and improved the — quarter of section number —, in township number —, of range number —, in the district of lands subject to sale at the land office at —, and containing — acres, which land has not yet been offered at public sale, and thus rendered subject to private entry; and I do hereby declare my intention to claim the said tract of land as a pre-emption right under section 2259 of the Revised Statutes of the United States.

Given under my hand this — day of —, A. D. 18—.

In presence of —.

[No. 7.]

FOR CASES WHERE THE LAND CLAIMED IS SUBJECT TO PRIVATE ENTRY.

I, —, of —, being —, have, since the 1st day of —, A. D. 18—, settled and improved the — quarter of section number —, in township number —, of range number —, in the district of lands subject to sale at the land office at —, and containing — acres, which land *has been rendered subject to private entry* prior to my settlement thereon; and I do hereby declare my intention to claim the said tract of land as a pre-emption right, under section 2259 of the Revised Statutes of the United States.

Given under my hand this — day of —, A. D. 18—.

In presence of —.

[No. 8.]

AFFIDAVIT REQUIRED OF PRE-EMPTION CLAIMANT.

I, —, claiming the right of pre-emption under section 2259 of the Revised Statutes of the United States, to the — quarter of section of number —, of township number —, of range number —, subject to sale at —, do solemnly — that I have never had the benefit of any right of pre-emption under said section; that I am not the owner of three hundred and twenty acres of land in any State or Territory of the United States, nor have I settled upon and improved said land to sell the same on speculation, but in good faith to appropri-

ate it to my own exclusive use or benefit; and that I have not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whomsoever, by which the title which I may acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person except myself.

I, _____, of the land office at _____, do hereby certify that the above affidavit was taken and subscribed before me this _____ day of _____, A. D. 18—.

[No. 9.]

We, _____, do solemnly swear that _____,* _____ and is an inhabitant of the _____ quarter of section number _____, of township number _____, of range number _____, and that no other person resided upon the said land, entitled to the right of pre-emption. That the said _____ entered upon and made settlement in person on the said land since the _____ day of _____ 18—, to wit, on the _____ day of _____, 18—, and has lived in the said house, and made it his exclusive home, from the _____ day of _____, 18—, until the present time. That he did not remove from his own land within the State of _____ to make the settlement above referred to; and that he has since said settlement plowed, fenced and cultivated about _____ acres of said land.

I, _____, do hereby certify that the above affidavit was taken and subscribed before me this _____ day of _____, A. D. 18—.

We certify that _____, whose name _____ subscribed to the foregoing affidavit, _____ person— of respectability.
_____, *Register*.
_____, *Receiver*.

[No. 10.]
HOMESTEAD.

APPLICATION } LAND OFFICE AT _____,
No. _____. } (Date) _____, 187—.

I, _____, of _____, do hereby apply to enter, under section 2289 of the Revised Statutes of the United States, the _____ of section _____, in township _____, of range _____, containing _____ acres.

LAND OFFICE AT _____,
(Date) _____, 187—.

I, _____, register of the land office, do hereby certify that the above application is for surveyed lands of the class which the ap-

*Here state the personal qualifications prescribed in section 2289 of the Revised Statutes.

plicant is legally entitled to enter under section 2289 of the Revised Statutes of the United States, and that there is no prior, valid, adverse right to the same.

_____, Register.

[No. 11.]

HOMESTEAD.

AFFIDAVIT.

LAND OFFICE AT _____,
(Date) _____, 187—.

I, _____, of _____, having filed my application No. _____, for an entry under section 2289 of the Revised Statutes of the United States, do solemnly swear that *[here state whether the applicant is the head of a family, or over twenty one years of age; whether a citizen of the United States, or has filed his declaration of intention of becoming such; or, if under twenty-one years of age, that he has served not less than fourteen days in the Army or Navy of the United States during actual war; that said application No. _____ is made for his or her exclusive benefit; and that said entry is made for the purpose of actual settlement and cultivation, and not, directly or indirectly, for the use or benefit of any other person or persons whomsoever,]* and that I have not heretofore had the benefit of this act.

Sworn to and subscribed, this _____ day of _____, before _____,
Register. [or Receiver.]

[No. 12.]

SOLDIER'S HOMESTEAD.

Section 2304 of the Revised Statutes of the United States.

HOMESTEAD DECLARATION.

LAND OFFICE AT _____,
(Date) _____, 187—.

No. _____.

I, _____, do hereby declare and give notice that I claim for a homestead, under section 2304 of the Revised Statutes of the United States, granting homesteads to honorably discharged soldiers and sailors, their widows and orphans, the _____ of section _____, of township _____, of range _____, containing _____ acres; and I further declare that I take the said tract of land for actual settlement and cultivation, and for my own use and benefit.

Per _____, his Attorney in fact.

[No. 13.]

SOLDIER'S HOMESTEAD.

Section 2304 of the Revised Statutes of the United States.

APPLICATION.

LAND OFFICE AT _____,
(Date) _____, 187—.

I, _____, hereby apply to enter, under section 2304 of the Revised Statutes of the United States, the _____ of section _____, of township _____, of range _____; containing _____ acres, and for which I filed my declaration on the _____ day of _____, _____, through _____, my duly appointed agent.

_____.

I, _____, register of the land office at _____, do hereby certify that _____ filed the above application at this office on the _____ day of _____, _____, and that he has taken the oath and paid the fees and commissions prescribed by law.

_____, Register.

[No. 14.]

SOLDIER'S HOMESTEAD.

Section 2304 of the Revised Statutes of the United States.

AFFIDAVIT.

No. _____.

LAND OFFICE AT _____,
(Date) _____, 187—.

I, _____, of _____, do solemnly swear that I am a _____, of the age of twenty-one years, and a citizen of the United States; that I served for ninety days in company _____, _____ Regiment United States Volunteers; that I was mustered into the United States military service the _____ day of _____, _____, and was honorably discharged therefrom on the _____ day of _____, _____; that I have since borne true allegiance to the Government; and that I have made my application, No. —, to enter a tract of land under section 2304 of the Revised Statutes of the United States, giving homesteads to honorably-discharged soldiers and sailors, their widows and orphan children; that I have made said application in good faith; and that I take said homestead for the purpose of actual settlement and cultivation, and for my own exclusive use and benefit, and for the use and benefit of no other person or persons whomsoever; and that I have not heretofore acquired a title to a tract of land under the homestead laws, or voluntarily relinquished or abandoned an entry heretofore made under said laws: So help me God.

Sworn to and subscribed before me, _____, register of the land office at _____, this _____ day _____, 187—.

_____, Register.

a healthy growing condition for eight years next succeeding the date of entry;

9. If, at the expiration of the said eight years, or at any time within five years thereafter, the person making the entry, or, if he or she be dead, his or her heirs or legal representatives, shall prove by two credible witnesses the fact of such planting, cultivation, &c., of the said timber for not less than the said period of eight years, he, she, or they shall receive a patent for the land embraced in said entry;

10. In case of the death of a person who, having entered a quarter-section, has complied with the provisions of this act for the period of three years—that is to say, who has broken ten acres the first year, ten acres the second year, and twenty acres the third year; and who has planted ten acres with timber the second year, and ten acres the third year—then, and in that case, his or her heirs or legal representatives shall be permitted, at their option, to continue to comply with the provisions of this act during the unexpired portion of the eight years, and thereupon receive a patent for said quarter section; or, on making proper proof of the compliance of the deceased settler with the requirements of the act for the said period of three years, they shall receive, without delay, a patent for forty acres of said quarter section, upon the condition that they relinquish to the United States all claim to the remainder of the land embraced in such entry;

11. If at any time after not less than one year from the date of entry under the first section of this act, and prior to the issue of a patent therefor, the claimant shall fail to do the breaking and planting required by this act, or any part thereof, or shall fail to cultivate, protect, and keep in good condition such timber, then, and in that event, such land shall become liable to a contest, in the manner provided in homestead cases; and upon due proof of such failure, the entry shall be cancelled and the land become again subject to entry under the homestead laws, or by some other person under the provisions of this act;

12. Each and every homestead settler, at any time after the end of the third year of his or her residence, who, in addition to the settlement and improvements required by the homestead laws, shall have had under cultivation for two years one acre of timber, (the trees thereon being not more than twelve feet apart each way, and in a good thrifty condition,) for each and every sixteen acres of said homestead, shall, upon due proof of such fact by two credible witnesses, receive his or her patent for said homestead;

13. No land acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of final certificate therefor;

14. The fees for all entries under this act shall be ten dollars, and the commission of registers and receivers on all entries (irrespective of area) shall be four dollars (two dollars to each) at the date of entry, and a like sum at the date of final proof;

15. No distinction is made, as to area or the amount of fee and commissions, between minimum and double-minimum lands; a party may enter 160 acres of either, on payment of the prescribed fee and commissions;

16. The fifth section of the act entitled "An act in addition to an act to punish crimes against the United States, and for other purposes," approved March 3, 1857, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

17. Parties who may have already made entries under the timber-culture act of March 3, 1873, of which this is amendatory, shall be permitted to continue and complete the same in the manner and under the conditions prescribed by this act.

32. Pursuant to the foregoing provisions, the following regulations will be observed, viz:

First. The register and receiver will restrict entries under this act to some one "technical quarter section" in any section of public land which is wholly prairie and naturally devoid of timber, and hence, subject to the operation of the act, which may be either the northeast quarter, southeast quarter, northwest quarter or southwest quarter, as the first legal applicant for a timber-culture entry in such section may elect. Before allowing any entry applied for, they will, by a careful examination of the plat and tract books with reference to any previous entry or entries within the limits of the same section, satisfy themselves that the desired entry is admissible under this rule.

Second. In the case of an application for a fractional subdivision containing less than forty acres, they will require the applicant to state in his affidavit that he has, or has not, as the case may be, made a previous entry of a similar fractional subdivision. If he shall have made one or more such previous entries, they will require him to exhibit his duplicate receipts or patents therefor, and will note the same by number, acres, district, and description of the land, upon the application presented thus: "Previous entry No. —, [*Description*,] — acres, — District."

Third. When they shall have satisfied themselves that the land applied for is properly subject to such entry, they will require the party to make affidavit, (Form No. 22,) and to pay the fee and that part of the commissions payable at the date of entry, and the receiver will issue his receipt therefor, in duplicate, giving the party a duplicate receipt. They will number the entry in its order, in a separate series of numbers, unless they have already a series under the act of March 3, 1873, to which this act is amendatory, in which case they will number the entry as one of that series; they will note the entry on their records, and report it in their monthly returns, sending up all the papers therein, with an abstract of the entries allowed during the month under this act.

Fourth. The fee and commissions in this class of entries the receiver will account for in the usual manner, indicating the same as fees and commissions on timber-culture entries, which will be charged against the maximum of \$3,000 now allowed by law.

Fifth. When a homestead party claims a patent for his homestead entry under the fourth section of this act, the register and receiver will require him to make affidavit, according to Form No. 23, and proof, according to Form No. 24, which must show that he has resided upon and cultivated the tract for not less than three years, in addition to the facts that the land is prairie in character, and that he has cultivated timber thereon, as required to bring the case within the provisions of said fourth section. This being done, and the proper commissions paid, the receiver will issue his receipt for the money, and the register his final certificate for the entry, (Form No. 25,) the papers to be numbered in the regular final homestead series.

Sixth. In all cases under this act, it will be required that trees shall be cultivated which shall be of the class included in the term "*timber*," the cultivation of shrubbery and fruit-trees not being sufficient.

[No. 20.]

CORROBORATIVE AFFIDAVIT—INDIAN HOMESTEAD—
UNDER ACT MARCH 3, 1875.

_____ and _____ do solemnly swear that we are well acquainted with _____, and know that he is an Indian, formerly of the _____ tribe; that he was born in the United States; that he has abandoned his relations with that tribe, and adopted the habits and pursuits of civilized life; [*here state that he is twenty-one years of age, or, if not, that he is the head of a family.*]

Sworn to and subscribed before me this _____ day of _____, 18____.

[No. 21.]

TIMBER-CULTURE—ACT OF MARCH 13, 1874.

APPLICATION No. _____.

I, _____, hereby apply to enter, under the provisions of the first section of the act of March 13, 1874, entitled "An Act to amend the act entitled 'An Act to encourage the growth of timber on western prairies,'" the _____ of section _____, in township _____, of range _____, containing _____ acres.

LAND OFFICE AT _____,
(Date) _____, 187____.

I, _____, register of the land office, do hereby certify that the above application is for the class of lands which the applicant is legally entitled to enter under the provisions of the first section of the timber-culture act of March 13, 1874; that there is no prior valid adverse right to the same, and that the land therein described, together with the lands heretofore entered, under the act of March 3, 1873, of which this is amendatory, in the said section, does not exceed one-quarter thereof.

_____, Register.

[No. 22.]

TIMBER-CULTURE—ACT OF MARCH 13, 1874.

AFFIDAVIT.

LAND OFFICE AT _____,
(Date) _____, 187____.

I, _____, having filed my application, No. —, for an entry under the provisions of the first section of the act of Congress approved March 13, 1874, entitled "An Act to amend an act entitled 'An Act to encourage the growth of timber on western prairies,'" do solemnly _____ that I am the head of a family, [*or over 21 years of age,*] and a citizen of the United States, [*or have declared my intention to become*

such;] that the section of land specified in my said application is composed exclusively of prairie lands naturally devoid of timber; that this entry is made for the cultivation of timber, and that I have not heretofore made an entry under this act, or the act of March 3, 1873, of which this is amendatory.

Sworn to and subscribed, this ____ day of ____, 18__, before me.

Register. [or Receiver.]

NOTE.—In case the applicant seeks to enter a fractional subdivision containing less than 40 acres, and shall have made one or more similar entries of such fractional subdivisions, the last clause of the above affidavit will be modified accordingly.

[No. 23.]

TIMBER-CULTURE HOMESTEAD—ACT OF MARCH 13, 1874.

FINAL AFFIDAVIT.

I, _____, having made a homestead entry of the ____ of section _____, in township _____, of range _____, subject to entry at _____, under the homestead laws of the United States, do now apply to perfect my claim thereto by virtue of the provisions of the fourth section of the act of March 13, 1874, entitled "An Act to amend the act entitled "An Act to encourage the growth of timber on western prairies," and for that purpose do solemnly _____ that I, _____, am a citizen of the United States; that I have made actual settlement upon and have cultivated the said land, having resided thereon continuously since the ____ day of ____, 18__, to the present time; that no part of said land has been alienated, but that I am the sole *bona-fide* owner as an actual settler; and that I will bear true allegiance to the Government of the United States; and I do further _____ that the above-described lands are prairie lands naturally devoid of timber, and that I have planted thereon, and had under cultivation for two years last past, _____ acres of [*here describe varieties of timber*] timber of which the trees are not more than twelve feet apart each way, and that the same are in a good, thrifty condition.

I, _____, _____ of the land office at _____, do hereby certify that the above affidavit was taken and subscribed before me this ____ day of ____, 18__.

Register. [or Receiver.]

[No. 24.]

TIMBER-CULTURE HOMESTEAD.

PROOF REQUIRED UNDER THE HOMESTEAD LAWS AND THE TIMBER-CULTURE ACT OF MARCH 13, 1874.

We, _____, do solemnly _____ that we have known _____ for ____ years last past; that he is _____ consisting of _____ and

—— a citizen of the United States; that he is an inhabitant of the —— of section No. ——, in township No. ——, of range No. ——, and that no other person resided upon the said land entitled to the right of homestead or pre-emption.

That the said —— entered upon and made settlement on said land on the —— day of ——, 18——, and has built a house thereon, [*here describe house,*] and has lived in the said house and made it his exclusive home from the —— day of ——, 18——, to the present time; and that he has, since said settlement, plowed, fenced, and cultivated about —— acres of said land, has made the following improvements thereon, to wit: [*here state improvements,*] and we do further swear that the above-described lands are prairie lands, naturally devoid of timber, and that the said —— —— has planted thereon, and had under cultivation for two years last past, —— acres of [*here describe varieties of timber*] timber of which the trees are not more than twelve feet apart each way, and that the same are in a good, thrifty condition.

_____.

I, —— ——, ——, do hereby certify that the above affidavit was taken and subscribed before me this —— day of ——, 18——.

We certify that —— —— and —— ——, whose names are subscribed to the foregoing affidavit, are persons of respectability.

_____, *Register.*
_____, *Receiver.*

[No. 25.]

TIMBER-CULTURE HOMESTEAD.

LAND OFFICE AT ——,
(Date) ——, 187——.

FINAL CERTIFICATE }	{ APPLICATION No. ——.
No. ——.	

IT IS HEREBY CERTIFIED, that, pursuant to the provisions of the homestead laws of the United States and the act of March 13, 1874, entitled "An Act to amend the act entitled 'An act to encourage the growth of timber on western prairies'" —— —— has made payment in full for —— of section No. ——, in township No. ——, of range No. ——, containing —— acres.

NOW, THEREFORE, BE IT KNOWN, that on presentation of this certificate to the COMMISSIONER OF THE GENERAL LAND OFFICE the said —— —— shall be entitled to a patent for the tract of land above described.

_____, *Register.*

UNITED STATES LAND OFFICES.

OHIO.	Bayfield.	Fargo.
Chillicothe.	Eau Claire.	Yankton.
INDIANA.	CALIFORNIA.	Bismarck.
Indianapolis.	San Francisco.	NEBRASKA.
ILLINOIS.	Marysville.	Norfolk.
Springfield.	Humboldt.	Beatrice.
MISSOURI.	Stockton.	Lincoln.
Boonville.	Visalia.	Niobrara.
Ironton.	Sacramento.	Grand Island.
Springfield.	Los Angeles.	North Platte.
ALABAMA.	Shasta.	Bloomington.
Mobile.	Susanville.	NEW MEXICO TER.
Huntsville.	Independence.	Santa Fé.
Montgomery.	NEVADA.	La Mesilla.
MISSISSIPPI.	Carson City.	KANSAS.
Jackson.	Eureka.	Topeka.
LOUISIANA.	Pioche.	Salina.
New Orleans.	Elko.	Independence.
Monroe.	WASHINGTON TER.	Wichita.
Natchitoches.	Olympia.	Kirwin.
MICHIGAN.	Vancouver.	Concordia.
Detroit.	Walla-Walla.	Larned.
East Saginaw.	MINNESOTA.	Hays City.
Ionia.	Taylor's Falls.	COLORADO TER.
Marquette.	Saint Cloud.	Denver City.
Traverse City.	Du Luth.	Fair Play.
ARKANSAS.	Alexandria.	Central City.
Little Rock.	Worthington.	Peublo.
Camden.	New Ulm.	Del Norte.
Harrison.	Litchfield.	IDAHO TER.
Dardanelle.	Detroit.	Boisé City.
FLORIDA.	Redwood Falls.	Lewiston.
Gainesville.	OREGON.	MONTANA TER.
IOWA.	Oregon City.	Helena.
Fort Des Moines.	Roseburg.	Bozeman.
Sioux City.	Le Grand.	ARIZONA TER.
WISCONSIN.	Linkville.	Prescott.
Menasha.	Dalles.	Florence.
Falls of St. Croix.	DAKOTA TER.	UTAH TER.
Wausau.	Sioux Falls.	Salt Lake City.
La Crosse.	Springfield.	WYOMING TER.
		Cheyenne.

[As a matter of convenient reference the several general pre-emption and homestead laws not in Part II., published in circular of August 30, 1872 are here added, marked A. B. C. D. E. F. G. and H., with corresponding sections of the Revised Statutes.—Ed.]

(A.)

An Act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights.

* * * * *

SEC. 10. *And be it further enacted*, That from and after the passage of this

act, every person, being the head of a family, or widow, or single man over the age of twenty-one years, and being a citizen of the United States, or having filed his declaration of intention to become a citizen as required by the naturalization laws, who, since the first day of June, A. D. eighteen hundred and forty, has made, or shall hereafter make, a settlement in person on the public lands to which the Indian title had been at the time of such settlement extinguished, and which has been or shall have been surveyed prior thereto, and who shall inhabit and improve the same, and who has or shall erect a dwelling thereon, shall be, and is, hereby authorized to enter with the register of the land office for the district in which such land may lie, by legal subdivisions, any number of acres not exceeding one hundred and sixty, or a quarter section of land, to include the residence of such claimant, upon paying to the United States the minimum price of such land, subject, however, to the following limitations and exceptions: No person shall be entitled to more than one pre-emptive right by virtue of this act; no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States; and no person who shall quit or abandon his residence on his own land to reside on the public land in the same State or Territory, shall acquire any right of pre-emption under this act; no lands included in any reservation, by treaty, law, or proclamation of the President of the United States, or reserved for salines or for other purposes; no lands reserved for the support of schools, nor the lands acquired by either of the two last treaties with the Miami tribe of Indians in the State of Indiana, or which may be acquired of the Wyandot tribe of Indians in the State of Ohio, or other Indian reservation to which the title has been or may be extinguished by the United States at any time during the operation of this act; no sections of land reserved to the United States alternate to other sections granted to any of the States for the construction of any canal, railroad, or other public improvement; no sections or fractions of sections included within the limits of any incorporated town; no portion of the public lands which have been selected as the site for a city or town; no parcel or lot of land actually settled and occupied for the purposes of trade and not agriculture; and no lands on which are situated any known salines or mines, shall be liable to entry under and by virtue of the provisions of this act. And so much of the proviso of the act of twenty-second of June, eighteen hundred and thirty-eight, or any order of the President of the United States, as directs certain reservations to be made in favor of certain claims under the treaty of Dancing Rabbit Creek, be, and the same is hereby, repealed; *Provided*, That such repeal shall not affect any title to any tract of land secured in virtue of said treaty. [Secs. 2258, 2259, 2260, 2261.]

SEC. 11. *And be it further enacted*, That when two or more persons shall have settled on the same quarter section of land, the right of pre-emption shall be in him or her who made the first settlement, provided such person shall conform to the other provisions of this act; and all questions as to the right of pre-emption arising between different settlers shall be settled by the register and receiver of the district within which the land is situated, subject to an appeal to and a revision by the *Secretary of the Treasury [Interior] of the United States. [Sec. 2273.]

SEC. 12. *And be it further enacted*, That prior to any entries being made under and by virtue of the provisions of this act, proof of the settlement and improvement thereby required shall be made to the satisfaction of the register and receiver of the land district in which such lands may lie, agreeably to such rules as shall be prescribed by the Secretary of the Treasury, [Interior,] who shall each be entitled to receive fifty cents from each applicant for his services to be rendered as aforesaid; and all assignments and transfers of the right hereby secured, prior to the issuing of the patent, shall be null and void. [Sec. 2263.]

SEC. 13. *And be it further enacted*, That before any person claiming the benefit of this act shall be allowed to enter such lands, he or she shall make oath before the receiver or register of the land district in which the land is situated (who are hereby authorized to administer the same) that he or she has never had the benefit of any right of pre-emption under this act; that he or

*Appellate power vested in Commissioner of the General Land-Office. See 10th section, act 12th June, 1858. (Statutes, vol. 11, p. 326.)

she is not the owner of three hundred and twenty acres of land in any State or territory of the United States; nor hath he or she settled upon and improved said land to sell the same on speculation, but in good faith to appropriate it to his or her own exclusive use or benefit; and that he or she has not, directly or indirectly, made any agreement or contract, in any way or manner, with any person or persons whatsoever, by which the title which he or she might acquire from the Government of the United States should inure in whole or in part to the benefit of any person except himself or herself; and if any person taking such oath shall swear falsely in the premises, he or she shall be subject to all the pains and penalties of perjury, and shall forfeit the money which he or she may have paid for said land, and all right and title to the same; and any grant or conveyance which he or she may have made, except in the hands of *bona-fide* purchasers, for a valuable consideration, shall be null and void. And it shall be the duty of the officer administering such oath to file a certificate thereof in the public land-office of such district, and to transmit a duplicate copy to the General Land-Office; either of which shall be good and sufficient evidence that such oath was administered according to law. [Sec. 2262.]

SEC. 14. *And be it further enacted*, That this act shall not delay the sale of any of the public lands of the United States beyond the time which has been, or may, be appointed by the proclamation of the President, nor shall the provisions of this act be available to any person or persons who shall fail to make the proof and payment, and file the affidavit required, before the day appointed for the commencement of the sales as aforesaid. [Sec. 2282.]

SEC. 15. *And be it further enacted*, That whenever any person has settled or shall settle and improve a tract of land subject at the time of settlement to private entry, and shall intend to purchase the same under the provisions of this act, such person shall, in the first case, within three months after the passage of the same, and in the last, within thirty days next after the date of such settlement, file with the register of the proper district a written statement describing the lands settled upon, and declaring the intention of such person to claim the same under the provisions of this act; and shall, where such settlement is already made, within twelve months after the passage of this act, and where it shall hereafter be made, within the same period after the date of such settlement, make the proof, affidavit, and payment herein required; and if he or she shall fail to file such written statement as aforesaid, or shall fail to make such affidavit, proof, and payment within twelve months aforesaid, the tract of land so settled and improved shall be subject to the entry of any other purchaser. [Sec 2264.]

* * * * *

Approved September 4, 1841. (5 Stats., p. 453.)

(B.)

An Act to authorize the investigation of alleged frauds under the pre-emption laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Commissioner, of the General Land Office be, and he hereby is, authorized to appoint a competent agent, whose duty it shall be, under direction of said Commissioner, to investigate upon oath the cases of fraud under the pre-emption laws alleged to exist in the Columbus land district, in the State of Mississippi, referred to in the late annual report of said Commissioner, communicated to Congress by letter of the Secretary of the Treasury, dated December the fifteenth, one thousand eight hundred and forty-two; and that such agent shall examine all witnesses who may be brought before him by the individual or individuals alleging the fraud, as well as those witnesses who may be produced by the parties in interest to sustain said claims; and that he be, and is hereby, invested with power to administer to such witnesses an oath to speak the truth in regard to any question which may be deemed necessary to the full examination of the cases so alleged to be fraudulent; and such testimony shall be reduced to writing and subscribed by each witness, and the same returned to the Commissioner, with the opinion of said agent on each

claim; and any witness so examined before the said agent who shall swear wilfully and falsely in regard to any matter or thing touching such examination, shall be subject, on conviction, to all the pains and penalties of perjury; and it shall be the duty of the Commissioner to decide the cases thus returned, and finally to settle the matter in controversy, subject alone to an appeal to the Secretary of the Treasury: *Provided*, That the power conferred by this section upon such agent is hereby limited to the term of one year from and after the date of this act; and the compensation to be paid to said agent shall not exceed three dollars per day for each day he may be necessarily engaged in the performance of the duties required by this section.

SEC. 2. *And be it further enacted*, That in any case where a party entitled to claim the benefits of any of the pre-emption laws shall have died before consummating his claim by filing, in due time, all the papers essential to the establishment of the same, it shall be competent for the executor or administrator of the estate of such party, or one of the heirs, to file the necessary papers to complete the same: *Provided*, That the entry in such cases shall be made in favor of the "heirs" of the deceased pre-emptor, and a patent thereon shall cause the title to inure to said heirs as if their names had been specially mentioned. (Sec. 2269.)

SEC. 3. *And be it further enacted*, That every settler on section sixteen, reserved for the use of schools, or on other reserves or land covered by private claims of others, which was not surveyed at the time of such settlement, and who shall otherwise come within the provisions of the several pre-emption laws in force at the time of the settlement, upon proof thereof before the register of the proper land office, shall be entitled to enter, at the minimum price, any other quarter section, or fractional section, or fractional quarter section, in the land district in which such school section of reserve or private claim may lie, so as not to exceed one hundred and sixty acres, not reserved from sale or in the occupancy of any actual *bona-fide* settler: *Provided*, Such settlement was made before the date of the act of fourth September, eighteen hundred and forty-one, and after the extinguishment of the Indian title.

SEC. 4. *And be it further enacted*, That where an individual has filed, under the late pre-emption law, his declaration of intention to claim the benefits of said law for one tract of land, it shall not be lawful for the same individual at any future time to file a second declaration for another tract.

SEC. 5. *And be it further enacted*, That claimants under the late pre-emption law, for land not yet proclaimed for sale, are required to make known their claims, in writing, to the register of the proper land office, within three months from the date of this act when the settlement has been already made, and within three months from the time of the settlement when such settlements shall hereafter be made, giving the designation of the tract and the time of settlement; otherwise his claim to be forfeited, and the tract awarded to the next settler, in the order of time, on the same tract of land, who shall have given such notice and otherwise complied with the conditions of the law. [Sec. 2265.]

SEC. 6. *And be it further enacted*, That whenever the vacancy of the office either of register or receiver, or both, shall render it impossible for the claimant to comply with any requisition of any of the pre-emption laws within the appointed time, such vacancy shall not operate to the detriment of the party claiming in respect to any matter essential to the establishment of his claim: *Provided*, That such requisition is complied with within the same period after the disability is removed as would have been allowed him had such disability not existed. [Sec. 2270.]

SEC. 7. *And be it further enacted*, That where a settler on the public lands may reside on a quarter section, a fractional quarter section, or a fraction of a section less than one hundred and sixty acres, and cultivated land on any other and different tract of either of the descriptions aforesaid, he or she shall be entitled, under the act of June twenty-two, one thousand eight hundred and thirty-eight, to the same privileges of a choice between two legal subdivisions of each, so as to include his or her house and farm, not to exceed one hundred and sixty acres in all, as is granted by the first section of that act to settlers residing on a quarter section and cultivating on another and different quarter.

SEC. 8. *And be it further enacted*, That where two or more persons are resid-

ing on any of the species of tract specified in section seven of this act, as required by the acts of the twenty-second of June, one thousand eight hundred and thirty-eight, and the first of June, one thousand eight hundred and forty, and any one or more of said settlers may have cultivated land during the period of residence required by either of said acts on another and different tract, or other and different tracts, the latter-mentioned settlers shall be entitled to the option of entering the tract lived on, jointly with the other or others, or of abandoning the tract lived on to those who have not cultivated land as above required, and entering the tract or tracts cultivated, so as not to exceed one hundred and sixty acres to any one settler, who, by virtue of this section, is entitled to a separate entry; or such joint settlers may jointly enter the tract so jointly occupied by them, and, in addition, enter other contiguous unoccupied lands, by legal subdivisions, so as not to exceed one hundred and sixty acres in all to each of such joint settlers: *Provided*, That the extended privileges granted to pre-emptors by this act shall not be construed to deprive any other actual settler of his or her previous and paramount right of pre-emption, or to extend to lands reserved for any other purpose whatever.

SEC. 9. *And be it further enacted*, That all persons coming within the tenth section of the act of the fourth of September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the sales of the public lands and to grant pre-emption rights," shall be entitled to the right of pre-emption under its provisions, notwithstanding such persons claiming the pre-emption shall have settled upon and improved the lands claimed before the same were surveyed: *Provided*, Such settlements were made before the date of the aforesaid act, and after the extinguishment of the Indian title. And said act shall not be so construed as to preclude any person who may have filed a notice or intention to claim any tract of land by pre-emption under said act, from the right allowed by law to others to purchase the same by private entry after the expiration of the right of pre-emption. [Sec 2272.]

Approved March 3, 1843. (5 Stats., p. 619.)

(C.)

An Act to extend pre-emption rights to certain lands therein mentioned.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the pre-emption laws of the United States, as they now exist, be, and they are hereby, extended over the alternate reserved sections of public lands along the lines of all the railroads in the United States, wherever public lands have been, or may be, granted by acts of Congress; and that it shall be the privilege of the persons residing on any of said reserved lands to pay for the same in soldiers' bounty-land warrants, estimated at a dollar and twenty-five cents per acre, or in gold and silver, or both together, in preference to any other person, and at any time before the same shall be offered for sale at auction: *Provided*, That no person shall be entitled to the benefit of this act who has not settled and improved, or shall not settle and improve, such lands prior to the final allotment of the alternate sections to such railroads by the General Land-Office: *And provided further*, That the price to be paid shall, in all cases, be two dollars and fifty cents per acre, or such other minimum price as is now fixed by law, or may be fixed upon lands hereafter granted; and no one person shall have the right of pre-emption to more than one hundred and sixty acres: *And provided further*, That any settler who has settled, or who may hereafter settle, on lands heretofore reserved on account of claims under French, Spanish, or, other grants which have been, or shall be, hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act and the act of fourth September, eighteen hundred and forty-one, entitled "An act to appropriate the proceeds of the public lands and to grant pre-emption rights," after the lands shall have been released from reservation, in the same manner as if no reservation existed. (Secs. 2279, 2280.) (10 Stats., p. 244.)

Approved, March 3, 1853.

(D.)

An Act for the relief of settlers on lands reserved for railroad purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every settler on public lands which have been, or may be, withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption, at the ordinary minimum to the lands settled on and cultivated by them: *Provided,* They shall prove up their rights according to such rules and regulations as may be prescribed by the Secretary of the Interior, and pay for the same before the day that may be fixed by the President's proclamation for the restoration of said lands to market. (Sec. 2281.)
Approved, March 27, 1854. (10 Stats., p. 269.)

(E.)

An Act to establish a land office in Colorado Territory, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all the lands belonging to the United States to which the Indian title has been or shall be extinguished shall be subject to the operations of the pre-emption act of the fourth September, 1841, and under the conditions, restrictions, and stipulations therein mentioned: *Provided, however,* That when unsurveyed lands are claimed by pre-emption, notice of the specific tracts claimed shall be filed within six months after the survey has been made in the field; and on failure to file such notice, or to pay for the tract claimed within twelve months from the filing of such notice, the parties claiming such lands shall forfeit all right thereto, provided said notices may be filed with the surveyor general, and to be noted by him on the township plats, until other arrangements have been made by law for that purpose. [Sec. 2257.]

* * * * *
Approved, June 2, 1862. (12 Stats., p. 413.)

(F.)

An Act to secure homesteads to actual settlers on the public domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That any person who is the head of a family, or who has arrived at the age of twenty-one years and is a citizen of the United States, or who shall have filed his declaration of intention to become such, as required by the naturalization laws of the United States, and who has never borne arms against the United States Government or given aid and comfort to its enemies, shall, from and after the first January, eighteen hundred and sixty-three, be entitled to enter one quarter section or a less quantity of unappropriated public lands upon which said person may have filed a pre-emption claim, or which may, at the time the application is made, be subject to pre-emption at one dollar and twenty-five cents or less per acre; or eighty acres or less of such unappropriated lands at two dollars and fifty cents per acre, to be located in a body, in conformity to the legal subdivisions of the public lands, and after the same shall have been surveyed: *Provided,* That any person owning and residing on land may, under the provisions of this act, enter other land lying contiguous to his or her said land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres. [Sec. 2289.]

SEC. 2. *And be it further enacted,* That the person applying for the benefit of this act, shall, upon application to the register of the land office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one or more years of age, or shall have performed service in the Army and Navy of the United States, and that he has never borne arms against the Government of the United States or given aid and comfort to its enemies, and that such ap-

plication is made for his or her exclusive use and benefit, and that said entry is made for the purpose of said actual settlement and cultivation, and not either directly or indirectly, for the use or benefit of any other person or person whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of ten dollars, he or she shall thereupon be permitted to enter the quantity of land specified; *Provided, however*, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry or, if he be dead, his widow; or, in case of her death, his heirs or devisee; or, in case of a widow making such entry her heirs or devisee in case of her death—shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of said land has been alienated, and that he has borne true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided by law: *And provided further*, That in case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being have their domicile, sell said land for the benefit of said infants, but for no other purpose; and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on payment of the office fees and sum of money herein specified. [Sec. 2290.]

SEC. 3. *And be it further enacted*, That the register of the land office shall note all such applications on the tract-books and plats of his office, and keep a register of all such entries, and make return thereof to the General Land-Office, together with the proof upon which they have been founded. [Sec. 2295.]

SEC. 4. *And be it further enacted*, That no lands acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the patent therefor. [Sec. 2296.]

SEC. 5. *And be it further enacted*, That if, at any time after the filing of the affidavit, as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven, after due notice to the settler, to the satisfaction of the register of the land office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the said land for more than six months at any time, then and in that event the land so entered shall revert to the Government. [Sec. 2297.]

SEC. 6. *And be it further enacted*, That no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act; and that the Commissioner of the General Land-Office is hereby required to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect; and that the registers and receivers of the several land offices shall be entitled to receive the same compensation for any lands entered under the provisions of this act that they are now entitled to receive when the same quantity of land is entered with money, one-half to be paid by the person making the application at the time of so doing, and the other half on the issue of the certificate by the person to whom it may be issued; but this shall not be construed to enlarge the maximum of compensation now prescribed by law for any register or receiver: *Provided*, That nothing contained in this act shall be so construed as to impair or interfere in any manner whatever with existing, pre-emption rights: *And provided further*, That all persons who may have filed their application for a pre-emption right prior to the passage of this act shall be entitled to all privileges of this act: *Provided further*, That no person who has served, or may hereafter serve, for a period of not less than fourteen days in the Army or Navy of the United States, either regular or volunteer, under the laws thereof, during the existence of an actual war, domestic or foreign, shall be deprived of the benefits of this act on account of not having attained the age of twenty-one years. [Secs. 2298, 2299, 2300.]

SEC. 7. *And be it further enacted*, That the fifth section of the act entitled "An Act in addition to an act more effectually to provide for the punishment of certain crimes against the United States, and for other purposes," approved the third of March, in the year eighteen hundred and fifty-seven, shall extend to all oaths, affirmations, and affidavits required or authorized by this act.

SEC. 8. *And be it further enacted*, That nothing in this act shall be so construed as to prevent any person who has availed him or herself of the benefits of the first section of this act from paying the minimum price, or the price to which the same may have graduated, for the quantity of land so entered at any time before the expiration of the five years, and obtained a patent therefor from the Government, as in other cases provided by law, on making proof of settlement and cultivation as provided by existing laws granting pre-emption rights. [Sec. 2301.]

Approved May 20, 1862. (12 Stats., p. 392.)

(G.)

AN ACT amendatory of the homestead law, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in case of any person desirous of availing himself of the benefits of the homestead act of twentieth May, eighteen hundred and sixty-two, but who, by reason of actual service in the military or naval service of the United States, is unable to do the personal preliminary acts at the district land office which the said act of twentieth of May, eighteen hundred and sixty-two, requires, and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a *bona-fide* improvement and settlement have been made, it shall and may be lawful for such person to make the affidavit required by said act before the officer commanding in the branch of the service in which the party may be engaged, which affidavit shall be as binding in law, and with like penalties, as if taken before the register or receiver; and upon such affidavit being filed with the register by the wife or other representative of the party, the same shall become effective from the date of such filing, providing the said application and affidavit are accompanied by the fee and commissions as required by law.

SEC. 2. *And be it further enacted*, That besides the ten-dollar fee exacted by the said act, the homestead applicant shall hereafter pay to the register and receiver each, as commissions, at the time of entry, one per centum upon the cash price as fixed by law of the land applied for, and like commissions when the claim is finally established and the certificate therefor issued as the basis of a patent. [Sec. 2290.]

SEC. 3. *And be it further enacted*, That in any case hereafter in which the applicant for the benefit of the homestead, and whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a *bona-fide* improvement and settlement have been made, is prevented, by reason of distance, bodily infirmity, or other good cause, from personal attendance at the district land-office, it shall and may be lawful for him to make the affidavit required by the original statute before the clerk of the court for the county in which the applicant is an actual resident, and to transmit the same, with the fee and commissions, to the register and receiver. [Sec. 2294.]

SEC. 4. *And be it further enacted*, That in lieu of the fee allowed by the twelfth section of the pre-emption act of fourth of September, eighteen hundred and forty-one, the register and receiver shall each be entitled to one dollar for their services in acting upon pre-emption claims, and shall be allowed, jointly, at the rate of fifteen cents per hundred words for the testimony which may be reduced by them to writing for claimants in establishing pre-emption or homestead rights; the regulations for giving proper effect to the provisions of this act to be prescribed by the Commissioner of the General Land-Office. [Sec. 2293.]

SEC. 5. *And be it further enacted*, That where a pre-emptor has taken the initiatory steps required by existing laws in regard to actual settlement, and is called away from such settlement by being actually engaged in the mili-

tary or naval service of the United States, and by reason of such absence is unable to appear at the district land-office to make before the register or receiver, the affidavits required by the thirteenth section of the pre-emption act of fourth of September, eighteen hundred and forty-one, the time for filing such affidavit and making final proof and entry of location shall be extended six months after the expiration of his term of service, upon satisfactory proof, by affidavit or the testimony of witnesses, that the said pre-emptor is so in the service, being filed with the register of the land-office for the district in which his settlement is made. [Sec. 2268.]

SEC. 6. *And be it further enacted*, That the registers and receivers in the State of California, in the State of Oregon, and in the Territories of Washington, Nevada, Colorado, Idaho, New Mexico, and Arizona, shall be entitled to collect and receive in addition to the fees and allowances provided by this act, fifty per centum of said fees and allowances as compensation for their services: *Provided*, That the salary and fees allowed any register or receiver shall not exceed in the aggregate the sum of three thousand dollars per annum. [Sec. 2238.]

Approved, March 21, 1864. (13 Stats., p. 35.)

(H.)

An Act for the disposal of the public lands for homestead actual settlement in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act, all the public lands in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida shall be disposed of according to the stipulations of the homestead law of twentieth May, eighteen hundred and sixty-two, entitled "An Act to secure homesteads to actual settlers on the public domain," and the act supplemental thereto, approved twenty-first of March, eighteen hundred and sixty-four, but with this restriction, that until the expiration of two years from and after the passage of this act no entry shall be made for more than a half-quarter section, or eighty acres; and in lieu of the sum of ten dollars required to be paid by the second section of said act, there shall be paid the sum of five dollars at the time of the issue of each patent; and that the public land in said States shall be disposed of in no other manner after the passage of this act: *Provided*, That no distinction or discrimination shall be made in the construction or execution of this act on account of race or color: *And provided further*, That no mineral lands shall be liable to entry and settlement under its provisions. [Secs. 2302, 2303.]

SEC. 2. *And be it further enacted*, That section second of the above-cited homestead law, entitled "An Act to secure homesteads to actual settlers on the public domain," approved May twentieth, eighteen hundred and sixty-two, be so amended as to read as follows: That the person applying for the benefit of this act shall, upon application to the register of the land-office in which he or she is about to make such entry, make affidavit before the said register or receiver that he or she is the head of a family, or is twenty-one years or more of age, or shall have performed service in the Army or Navy of the United States, and that such application is made for his or her exclusive use and benefit, and that said entry is made for the purpose of actual settlement and cultivation, and not, either directly or indirectly, for the use or benefit of any other person or persons whomsoever; and upon filing the said affidavit with the register or receiver, and on payment of five dollars when the entry is not more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified: *Provided, however*, That no certificate shall be given or patent issued therefor until the expiration of five years from the date of such entry; and if, at the expiration of such time, or at any time within two years thereafter, the person making such entry, or if he be dead, his widow, or in case of her death, his heirs or devisee, or in case of a widow making such entry, her heirs or devisee, in case of her death, shall prove by two credible witnesses that he, she, or they have resided upon or cultivated the same for the term of five years immediately succeeding the time of filing the affidavit aforesaid, and shall make affidavit that no part of

said land has been alienated, and that he will bear true allegiance to the Government of the United States; then, in such case, he, she, or they, if at that time a citizen of the United States, shall be entitled to a patent, as in other cases provided by law: *And provided further*, That in case of the death of both father and mother, leaving an infant child or children under twenty-one years of age, the right and fee shall inure to the benefit of said infant child or children; and the executor, administrator, or guardian may, at any time within two years after the death of the surviving parent, and in accordance with the laws of the State in which such children for the time being have their domicile, sell said land for the benefit of said infants, but for no other purpose, and the purchaser shall acquire the absolute title by the purchase, and be entitled to a patent from the United States on the payment of the office-fees and sums of money herein specified: *Provided*, That until the first day of January, eighteen hundred and sixty-seven, any person applying for the benefit of this act shall, in addition to the oath hereinbefore required, also make oath that he has not borne arms against the United States or given aid and comfort to its enemies. [Secs. 2290, 2291, 2292.]

SEC. 3. *And be it further enacted*, That all the provisions of the said homestead law, and the act amendatory thereof, approved March twenty-first, eighteen hundred and sixty-four, so far as the same may be applicable, except so far as the same are modified by the preceding sections of this act, are applied to and make part of this act as fully as if herein enacted and set forth.

Approved, June 21, 1866. (14 Stats., p. 67.)

No. 266.

OLE NEILSON;

Homestead claim under the act of March 21, 1864. Neilson did not reside on the land, neither did any member of his family for two years after the entry.

Held—That he had no right to the land; that the cancellation of an entry made of offered land does not of itself restore the land to private entry; that it can only be restored by public notice in the manner provided by law and the regulations of the Department.

DEPARTMENT OF JUSTICE, OFFICE OF ASSISTANT ATTORNEY GENERAL, Washington, July 17, 1871.

SIR:—I have examined the case of Ole Neilson claiming as a homestead N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, and S. W. $\frac{1}{4}$, of S. W. $\frac{1}{4}$, Sec. 23, and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, Sec. 22, 117, 32, Litchfield, Minn. Neilson entered the tract as a homestead June 11, 1864. He was at that time in the military service of the United States. He was honorably discharged December 2, 1865, and immediately commenced to improve the land. He built a house and commenced an actual residence in it May 30, 1866. He has made valuable improvements and his good faith is not questioned.

The Commissioner decided that the entry must be cancelled on the ground that two years elapsed between the date of entry and that of the first residence and cultivation, while the law in such a case required the party to make affidavit that *bona-fide* settlement and improvements had been made on the land within six months from entry, and that some member of his family was residing thereon.

In view, however, of the valuable improvements made upon the tract, the Commissioner instructed the local officers to allow claimant to enter the land at private entry. From this decision Neilson has appealed.

The amendatory homestead act of March 21, 1864, Sec. 1., allowed entry by a person in the actual military or naval service of the United

States of land, upon which his family, or some member of it, was residing, and upon which *bona-fide* improvements and cultivation had been made. Under these circumstances it was lawful for such person to make the affidavit required by the act of 1862, before the officer commanding in the branch of the service to which he belonged, and upon such affidavit being filed with the register of the local office by the wife or other representative of such person, it became effective from the date of such filing. The intention of Congress as expressed in this act, was to prevent the failure of homestead claims by reason of absence of the claimant in the military or naval service. It provided for and required, however, the occupancy of the land by some member of the soldier's or sailor's family. The applicant was required to make affidavit that such residence had been already acquired.

In the case of Neilson it is admitted that the land was not cultivated until two years after the entry, and that no member of his family was on the land at any time during that period. His entry should therefore be cancelled. With reference to the cancellation of an entry made of offered land, the present ruling of the General Land-Office, approved by the Department proper, is that such cancellation does not of itself restore the land to private entry. It can only be so restored by public notice, in the manner provided by law and the regulations of the Department.

The claimant cannot therefore be allowed to enter the land at private entry in accordance with the instructions of the Commissioner to the local officers.

With this exception, the decision of the Commissioner should in my opinion be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

[NOTE.—This opinion was not adopted by the Secretary, who suspended the case in view of expected Congressional Legislation. Neilson was afterwards allowed to enter under the soldiers' Homestead Law. Ed.]

No. 267.

EUGENE CRISS.

Application to make cash entry. The tract is within limits of the grant to the Iowa Falls and Sioux City R. R. (11 Stats., 915), and was covered by a pre-emption claim at the time the line of road was definitely located: it therefore did not pass to the road.

This tract was unoffered land, and is in an odd section. The even sections were proclaimed for sale.

Held—That the odd sections, never having been offered, were not subject to private entry.

Decision by the Secretary, Nov. 20, 1871.

No. 268.

JAMES B. SLOAN.

Sloan asked to enter at private entry certain lands, before that withdrawn for a railroad and not restored.

Held—That his application was properly refused.

Decision by the Secretary, Jan. 4, 1872.

No. 269.

PAXTON v. DAVIDSON.

Payment for lands at private entry must be made in cash, not by check, especially where another party claims the land who has in all respects complied with the law and received the duplicate receipt.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 8th March, 1872.

SIR:—I have examined the case of J. W. Paxton v. W. F. Davidson, on appeal from your decision of September 8th, 1871, involving titles to certain lands in the district of New Ulm, Minnesota.

The question involved is one of law, and arises upon a statement of facts substantially as follows:

Paxton, July 17, 1868, applied to enter certain lands among which it is claimed are the lands in controversy. He filled out the application in regular form and deposited the same with the Receiver, but took no duplicate receipts. He had, prior to this time, left with the Register a check or bill of credit upon the Marine National Bank of St. Paul, for six thousand dollars, intended, as it is claimed, to pay for these and other entries. He also had a verbal agreement with the Receiver by which that officer was authorized to draw on said Bank to the extent of \$10,000, to pay for these or any other entries that he (Paxton) might make. These applications, so far as the tracts in controversy are concerned, were never entered upon the tract books or plats of the local office.

On the 28th day of July, 1868, one D. C. Valentine, the duly accredited agent of Davidson, applied at the local office to make entries of certain lands. An inspection of the plats showing no appropriation of the tracts in controversy, he offered to enter them, but was informed by the Receiver and his clerk that they had already been entered and paid for by Paxton. When informed of the nature of the entry and payment by Paxton, he insisted upon its irregularity and upon his own right to make an entry. After consultation the Register and Receiver finally agreed to take all the applications of Paxton then on file, check them off on the plats, and then allow Valentine to enter any lands that were left. This having been done, Valentine entered the tracts in controversy with many others, paid for the same and received duplicate receipts. Paxton claims, and the testimony of the Receiver and his clerk tends to show, that the tracts in controversy were included in his original applications, but at the date of the entries by Valentine, the same had been mislaid in the office of the Receiver and could not be found. The Receiver and his clerk both swear that they saw these applications subsequent to Valentine's entry; but they are not produced, nor is their absence satisfactorily explained.

You hold in your decision of September 8th, 1871, that the lands in contest were never actually entered by Paxton in any true or legal sense, for the reason that payment for the same was made by check, while the law for the disposition of the public domain requires all sales of the public lands to be made for cash, military warrants or certain kinds of scrip. From this decision an appeal has been taken by Paxton.

While I would not go so far as to hold that a regularly made application to enter a tract of land, which through the neglect of the local officers had not been entered upon the plat or books, would be invalid

as an entry, because payment had been made by a check which prior to the entry had been honored by the bank and the proceeds in part applied by the Receiver; yet in a case like the present I have little hesitancy in holding that such an entry must yield to a subsequent one, having the equities of the one found in this case, and in which all the requirements of law have been fully met without fraud or collusion.

Viewing it in the most favorable light for Paxton, this is the present case. Valentine, for his principal, found the land unappropriated, so far as he himself could ascertain or the local officers could inform him. He accordingly made, and they allowed an entry. He paid the price of the land and took receipts. He has therefore *prima facie* a vested right to a patent, having fully complied with all the requirements of law, and having in his possession the best evidence of title of which the case is susceptible. The *onus probandi* is upon Paxton to establish the superiority of his own title, and this he has failed to do by the evidence produced.

I therefore affirm your decision, and return herewith the papers transmitted with your letter of January 15th, 1872.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 270.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
September 12, 1872.

GENTLEMEN :—The circular of January 1, 1836, authorized the local land officers to allow parties to embrace in *one entry* the whole number of tracts desired to be entered on the same day. But it was found from experience to be productive of more inconvenience than advantage, and, hence, was rescinded by circular dated October 12, 1836.

Notwithstanding this revocation, the practice has been continued, under the first circular, at some of the local offices, so as to retard and embarrass, rather than facilitate the transaction of business.

In order, therefore, to confine the practice to limits which will prevent errors, and correct the evils growing out of the past practice of the local officers, you are instructed to restrict entries made on the same day, by the same party, to one township and range, but as many parts of sections as desired, in the same township and range, may be included in one entry, not exceeding, however, 640 acres, and in no case will one entry be allowed to embrace lands in different townships and ranges.

Respectfully,

WILLIS DRUMMOND, *Commissioner.*

REGISTER AND RECEIVER.

No. 271.

CYRUS WOODMAN (*Porterfield Warrant*).

The local officers were directed to offer at public sale certain land theretofore reserved, and they give the required notice.

Held—That the land was not subject to disposal, and no entry could be allowed, whether homestead, pre-emption or other, until after the land had been offered at public sale.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., March 16, 1870.

SIR:—I have received your report of the 1st ult., and accompanying papers, in the case of the appeal taken by Cyrus Woodman from your decision of December 9, 1869.

It appears that the Register and Receiver at Ionia, Michigan, had been directed to offer at public sale certain lands which had been reserved, situate in townships 18 and 19 of range 3 west. The day before the sale was to take place, Mr. Woodman applied to locate 2,440 acres of them with "Porterfield Scrip" issued under act of April 11, 1860, and with special certificate No. 2, issued to Wm. Girard, under act of February 10, 1855.

The Register and Receiver refused to receive the applications; and on appeal to you, you decided that the lands were "not liable to disposal, and no entry thereof could be allowed, whether pre-emption, homestead or other, until they should be offered at public sale, pursuant to instructions."

After a careful examination of the elaborate argument filed by the attorney of Mr. Woodman, I concur in your opinion as to the status of the lands in question, and affirm your decision.

The papers are returned.

Very respectfully,

W. T. OTTO, *Act'g. Sec'y.*

HON. JOS. S. WILSON, *Commissioner of the General Land-Office.*

No. 272.

CIRCULAR.

DESERT LANDS IN LASSEN COUNTY, CALIFORNIA, ACT MARCH 3, 1875.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

April 8, 1875.

REGISTER AND RECEIVER, *Susanville, California.*

GENTLEMEN:—The following is the first section of an act of Congress approved March 3, 1875, entitled "An Act to provide for the sale of desert lands in Lassen county, California," (Part II., No 140.)

Your first duty in executing the law will be to require from the party who applies for its benefits a declaration—to be sworn to before any officer having an official seal, authorized to administer oaths—setting forth that he is qualified as called for in the act, and his intention to reclaim the land in the manner therein designated, the land to be described particularly if surveyed, and, if not surveyed, as nearly as possible without a survey, by giving with as much precision and clearness as practicable the locality of the tract in reference to known and conspicuous natural objects, or the established lines of surveys, so as to admit of its being hereafter clearly identified by the surveyors in ex-

tending such lines; in addition to which you must be satisfied by the affidavits of at least two credible witnesses that the land is of the character described in the act. This done, you will give the declaration its proper number, refer thereon to the act under which made, note the same on your books, and appropriately file the papers in your office. Of such declarations which may be filed you will keep a docket, indicating number, date, name of party, and description of land called for, and will forward an abstract of the same to this Office, that they may be properly noted on the records here. In any case where the land so filed for is not surveyed, you will in due time call upon the Surveyor-General for an extension of the surveys, such as to embrace therein the tract claimed. If at any time within two years from the date of filing, the party shall make satisfactory proof of the reclamation of all of the section of land for which the declaration was filed, which proof shall consist of the testimony of not less than two disinterested witnesses who shall appear in person before you, and shall declare that they have personal knowledge of the condition of each subdivision of the land applied for, you will allow him to make entry or location of the re-claimed section, or any part thereof, at the ordinary minimum price of \$1.25 per acre. You will issue the usual entry papers, properly note the entry on your records, and make returns therefor to this Office in the usual manner, forwarding the proof on which allowed with the returns, and a reference to said act to be noted on the papers.

The rights which may be acquired under this act, by any party duly qualified and complying with its requirements, before proof made and patent certificate issued, as above provided for, are personal in character and not transferable.

It is to be noted, in conclusion, that the second and only other section of said act defines the meaning of "desert lands," as the expression is used therein, by the following words, *viz* : "That all lands within said county of Lassen, exclusive of timber lands and of mineral lands, which do not produce grass, or which will not, without such reclamation, produce some agricultural crop, shall be deemed desert lands within the meaning of this act."

Please acknowledge the receipt of this letter.

Very respectfully, your obedient servant,
S. S. BURDETT, *Commissioner*.

JUDICIAL DECISIONS.

THE GENERAL LAND-OFFICE.

Whether the title to a portion of the public lands has passed from the United States, depends exclusively upon the laws of the United States; when it has passed it then becomes subject to the State laws. *Wilcox v. Jackson*, 13 Pet., 498.

The Secretary of the Interior has the power of supervision and appeal in all matters relating to the General Land-office; he may set aside a survey under a confirmed Spanish claim, order another to be made and issue a patent on it. *Maguire v. Tyler*, 1 Bl., 195.

The commissioner of the land-office has power to dispense with the regulations established by him under the pre-emption law. *Lytle v. Arkansas*, 9 H., 314.

A pre-emptioner is not prejudiced by the misconduct or neglect of an officer of the land-office. *Ibid.*

If a patent be issued in a wrong name, the Commissioner of the General Land-Office has power to correct the mistake by accepting a surrender of such patent and issuing another in the proper name of the owner. *Bell v. Hearne*, 19 H., 252.

If a patent be fraudulently or negligently issued to a wrong person, the Commissioner has power to cancel it. *Doswell v. De la Lanza*, 20 H., 29.

The Commissioner has power to vacate a fraudulent entry of public land. *Harkness v. Underhill*, 1 Bl., 316.

The practice of the land-office to receive a certificate of purchase, as evidence of title, cannot affect the rights of the true owner. *Irvine v. Marshall*, 20 H. 558.

Under the act of 8 May, 1822, the register and receiver had no power to decide upon conflicting titles, but only upon conflicting locations. *Farmer's Heirs v. Mobile*, 9 H., 451. *Tate v. Carney*, 24 H., 357.

Since the act of 4 July, 1836, the judgment of the register and receiver on a pre-emption claim is not conclusive; it is subject to revision by the commissioner. *Barnard v. Ashley*, 18 H., 43, s. c. Hemp. 665.

The decision of the register and receiver, confirmed by the Commissioner, between conflicting pre-emption claimants, does not oust the jurisdiction of the courts. *Garland v. Wynn*, 20 H., 6. *Lindsey v. Hawes*, 2 Bl., 554, s. p. *Minnesota v. Bachelder*, 1 Wall., 109. *Mortimer v. Rossteuscher*, 1 West. Jur. 359.

The proceedings before the executive department, in reference to conflicting public grants, do not conclude the title or control the construction of the acts. *Dubuque and Pacific Railroad Co. v. Litchfield*, 23 H., 66.

The adjudication of the register and receiver is subject to revision by the courts, on proof that the entry was obtained by fraud and imposition. *Lytle v. Arkansas*, 22 H., 193.

The act of the register, in issuing a warrant under an assignment of a certificate of a military right, is ministerial, not judicial. *Brush v. Ware*, 15 Pet., 93.

A surveyor of public lands is a disbursing officer, and as such required to give security, by the act of 7 May, 1822. *Farrar v. United States*, 5 Pet., 373.

Prior to the act of 30 May, 1862, a surveyor-general had authority to enter into contracts, without their being first approved by the commissioner. *McKee v. United States*, 1 N. & H., 336.

The granting of a patent for lands, where proof, hearing and decision are required, and where the exercise of judgment and discretion is thus necessary, is not a matter whereon the action of the department is subject to re-examination by the Supreme Court of the District of Columbia. *The Secretary v. McGarrahan*, 9 Wall., 298.

The register and receiver, in acting upon a claim of pre-emption, exercise a judicial discretion, even when a third party has a good title to the land; and therefore, their action will not be interfered with, by injunction. *Litchfield v. The Register*, 1 Wool., 299.

The decision of the register and receiver of a land office, upon a contested right of pre-emption, is conclusive, and will not be disregarded by the courts, unless in case of fraud, or clear mistake, or where he has exceeded his jurisdiction. *Bracken v. Parkison*, 1 Pinn., 685.

PATENTS.

The title of the United States can only pass by patent, or by an act of Congress, in words of present grant. *Wilcox v. Jackson*, 13 Pet., 499.

Congress has the sole power to declare the effect and precedence of titles to public lands, emanating from the United States. *Bagnell v. Broderick*, 13 Pet., 436.

A patent carries the fee, and is the best title known to a court of law. *Ibid.* *Hooper v. Scheimer*, 23 H., 235.

A patent in the name of a deceased person, conveys no title. *Galloway v. Finley*, 12 Pet., 264.

Under the act of 1836, a patent in the name of a deceased person, enures to the benefit of his heirs. *Schedda v. Sawyer*, 4 McL., 181.

The description in the patent is conclusive evidence of what land passes by it. *Mann v. Wilson*, 23 H., 458.

Where a special grant was located, partly on vacant lands, and partly on lands claimed by other parties, and the register, in the return of survey, noted them accordingly, and certified that the lands embraced in the survey were vacant, with the exception of the parts designated as private claims, a patent issued on such survey was held only to embrace lands marked vacant. *Lafayette's Heirs v. Kenton*, 18 H., 197.

A patent is conclusive as to the legal title where there is no provision by law for an inquiry into its fairness; a third party cannot, in ejectment, raise the question of fraud between the grantor and grantee. *Field v. Seabury*, 19 H., 323, 333.

The presumption is, that a patent is valid and passes the legal title; but this may be rebutted, by proof, that the land was not subject to entry. *Minter v. Crommeline*, 18 H., 87.

A patent from the United States does not affect pre-existing titles. *United States v. Arredondo*, 6 Pet., 736. *New Orleans v. De Armas*, 9 Pet., 223.

The issuing of a grant is not conclusive of a right in the power which issued it; on its face, it is conclusive and cannot be controverted; but if the thing granted were not in the grantor, nothing passes to the grantee. *New Orleans v. United States*, 10 Pet., 662.

If two patents be issued for the same land and the first in date be obtained fraudulently or against law, it does not carry the legal title. *Stoddard v. Chambers*, 2 H., 285.

A patent is a mere ministerial act, and if issued for lands reserved from sale by law, is void. *Ibid.*

A patent which reserves the rights of certain third parties is of no avail against such parties, though claiming under a patent subsequent in date. *Ballance v. Forsyth*, 13 H. 18. s. c. 6. McL., 562. *Gregg v. Tesson*, 1 Bl., 150.

A patent, subject to the rights of all persons claiming under a certain act of Congress, confers, notwithstanding the reservation, a title in fee. *Dredge v. Forsyth*, 2 Bl., 563.

Where a tract of land is lost, in whole or in part, by a paramount title the patent may be cancelled. *Nelson v. Moun*, 3 McL., 319.

A patent for land covered by a paramount title, does not vest the fee in the patentee. *Ibid.*

After the issuing of a patent, the assignments and transfers of the pre-emption right will not be inquired into. *Morgan v. Curtenius*, 4 McL., 366.

Effect of a patent, for a confirmed Mexican claim, under the act of 1851. *Beard v. Federy*, 3 Wall, 479.

If a patent be obtained by fraud, the United States may set it aside, by bill in equity. *United States v. Hughes*, 11 H., 552. s. c., 4 Wall., 232. *Field v. Seabury*, 19 H., 324, 333.

So, if it issue by mistake, for lands reserved from sale by law. *United States v. Stone*, 2 Wall., 526.

A patent is a title from its date, and conclusive against all whose rights did not commence previous to its emanation. *Hoofnagle v. Anderson*, 7 Wh., 212.

If the proceedings on which the patent was founded, were irregular, the government, but no one having no prior equity, can take advantage of it. *Ibid.*

The patent is the foundation of the title at law, and neither party can bring his entry before the court. *McArthur v. Browder*, 4 Wh., 488.

But, a junior patentee, claiming under an elder entry, may have relief in equity. *Ibid.* *Brush v. Ware*, 15 Pet., 93, s. c. 1 McL., 533.

A description which will identify the lands is all that is necessary for a grant. *Ibid.*

But an entry should be made with such certainty, that subsequent purchasers may be enabled to locate the adjacent residuum. *Ibid.*

An amended entry retains its original character so far as it is not altered; so far as it is altered it is a new entry. *Ibid.*

The right to a patent, once vested, is equivalent, as respects the government, to a patent issued. *Stark v. Starr*, 6 Wall., 402.

A patent, when issued, so far as may be necessary to cut off intervening claimants, relates back to the inception of the right of the patentee. *Ibid.*

A patent for land which has been previously granted, reserved or appropriated, is void. *Reichart v. Felps*, 6 Wall., 160. s. p. *Parkison v. Bracken*, Burn. (Wis.) 13. s. c. 1 Pinn., 174.

A patent relinquishing to the patentee the right of the government to certain lands, but providing that it shall not affect the rights of third persons, allows a judicial inquiry into the merits of opposing claims. *White v. Cannon*, 6 Wall., 443.

At law, a patent is conclusive evidence of title in the patentee; if the defendant have a superior equitable title, he can only assert it in a court of equity. *Parkison v. Bracken*, Burn. (Wis.) 13. s. c. 1 Pinn., 174. *Johnson v. Towsley*, 13 Wall., 72.

A patent which appears on its face to have been regularly issued, will be presumed to have been signed and executed according to law, until the contrary be made to appear. *Ibid.*

The act of 3 March, 1841, (1 Bright Dig. 465), cures all enumerated defects in patents previously issued, and relates back to the date of the patent confirmed, though then in litigation. *Ibid.*

After the granting of a patent, it is competent for a court of equity

to inquire and determine whether the patentee do or do not hold in trust for another; the action of the land-officers is not conclusive upon the courts. *Johnson v. Towsley* 13 Wall. s. p. *Samson v. Smiley*, Ibid. 91.

The act 20 May, 1836, authorizing the issue of patents in the names of deceased parties, applies to lands held under the Oregon donation act of 27 September, 1850. *Davenport v. Lamb*, 13 Wall., 418.

A memorandum, subsequently made in the margin of the record of a patent, that it was issued for another section than the one recorded, the patent itself not being produced, has no effect upon the title. *Branson v. Wirth*, 5 Chicago Leg. News, 350.

SALES OF PUBLIC LANDS.

The power of congress to "dispose of" the public lands, is not limited to sales thereof; they may be leased. *United States v. Gratiot*, 14 Pet. 526. s. c. 1 McL. 454.

It is not a fraud on the United States for two land companies to appoint a common agent to purchase at a sale of public lands, for their joint benefit. *Oliver v. Piatt*, 3 H. 333, s. c. 1 McL., 295.

Whenever a tract of land has been appropriated to the public use, it is severed from the mass of the public domain, and subsequent laws of sale are not construed to embrace it. *Wilcox v. Jackson*, 13 Pet., 498.

A warrant and survey do not constitute a legal title; until consummated by patent, the warrantee is the holder of an equitable right, which is subject to examination. *Miller v. Kerr*, 7 Wh., 1.

Where an Indian Reservation was offered for sale, and a patent issued for it, and this could only be done after an abandonment of the land, the presumption is, that the proper authority had decided upon the fact of abandonment. *Minter v. Crommelin*, 18 H., 87.

Lands within the Zanesville district, erected by act of 3 March, 1803, could not after that date, be sold at the Marietta land-office. *Matthews v. Zane*, 5 Cr. 92. s. c. 7 Wh., 164.

5. A party who is not thereby injured cannot defeat the title of a purchaser at a sale of public land, by showing the existence of a combination to prevent competition among the bidders. *Root v. Shields*, 1 Wool., 340.

PUBLIC GRANTS.

A grant may be made by statute; and a confirmation by law, is to all intents and purposes a grant. *Strother v. Lucas*, 12 Pet. 411. s. p. *Field v. Seabury*, 19 H., 323, 333.

A public grant, conveying a present beneficial interest, is irrevocable. *Rice v. Minnesota and Northwestern Railroad Co.* 1 Bl., 358.

But a grant to a territory, to aid in the construction of a railroad, with a proviso, that no title shall vest, until 20 miles of the road be finished, conveys no present interest, and is revocable by Congress at any time before such interest becomes vested. Ibid.

Legislative grants are not warranties, and only pass such estate as is in the grantor at the time. Ibid.

A grant of lands to a State, to be located, under the direction of its

legislature, on any lands of the United States, is a complete title, from the time of making the selection, and notice thereof given to the surveyor-general. *Lessieur v. Price*, 12 H., 59.

The act of 1841, granting lands to certain States, did not vest the fee in them; therefore in a suit to try the legal title, a patent from the United States must prevail over one granted by a State. *Foley v. Harrison*, 15 H., 433.

Under the act of 3 August, 1846, the Commissioner of the General Land-Office, had power to decide finally on the claims of parties to such lands; his decision, and a patent issued thereon, are conclusive of the title. *Ibid.*

The act of 26 March, 1851, was a legislative grant of the lands therein mentioned; but a strict compliance with its provisions was essential to a confirmation of the grant. *Field v. Seabury*, 19 H., 324, 333.

The act of 3 March, 1823, conferred on the settlers in Peoria, an incipient title to their lots, which, after a survey, will support an ejectment. *Bryan v. Forsyth*, 19 H., 334. See *Ballance v. Papin*, *Ibid.*, 132. *Hall v. Papin*, 24 H., 132. *Meehan v. Forsyth*, *Ibid.*, 175. *Forsyth v. Ballance*, 6 McL., 562. s. o. 13, H., 18.

That act applied only to the new town, not to the out lots near the old village of Peoria. *Hall v. Papin*, 24 H., 132.

The act of 1812 granted to the inhabitants of the towns and villages named therein, their lands used in common for pasturage, but reserved the power to define the limits by a survey. *Carondelet v. St. Louis*, 1 Bl., 179.

The act of 1812 was a present operative grant to the towns and villages therein named, of all the interest of the United States in the lands granted. *Glasgow v. Hortiz*, 1 Bl., 595.

Under the act of June 10, 1852, granting to Missouri certain lands for railroad purposes, the location of them was not fixed until the railroad company caused a map of the road to be recorded, as required by the act of acceptance. *Baker v. Gee*, 1 Wall., 333.

Where Congress grants lands to a State for railroad purposes, and no other, and the bulk of them are thus appropriated, no one but the Government can object to the act of the State in recognizing pre-emption claims in actual settlers, whose occupancy commenced prior to the grant by Congress. *Ibid.*

Where both parties claim under public grants, the elder one must prevail. *Dubuque and Pacific Railroad Co. v. Litchfield*, 23 H., 66.

All such grants are strictly construed against the grantees, nothing passes but what is conveyed in clear and explicit language. *Ibid.*

A donation claim could not be located on land occupied by an actual settler. *Barnard v. Ashley*, 18, H. 43. s. o. Hemp., 665.

A grant of lands upon a good consideration is not a gratuity, and if the original party from whom the consideration moved, die before the grant is made, the patent properly issues to his heirs. *Forsyth v. Ballance*, 6 McL., 562. s. o. 13, H., 18.

Lands may be confirmed to actual settlers, under authority of an act of Congress, by an officer duly authorized, by a writing without seal; confirmation by deed is not requisite. *Reichert v. Felps*, 6 Wall., 160.

Congress has no power to organize a board of revision, to annul titles confirmed many years previously, by the authorized agents of the government. *Ibid.*

The act of 1850 (1 Bright, Dig., 492) concerning swamp and overflowed lands, conferred a present vested right therein, which excepted them from subsequent railroad grants. *Railroad Co. v. Smith*, 9 Wall., 95.

The act 29 June, 1854 (10 Stat. 302) granted to the Territory of Minnesota a present estate in the lands therein mentioned; the 4th section merely qualified and restrained the power of disposal. *United States v. Minnesota and Northwestern Railroad Co.*, 1 Minn., 127. *Minnesota and Northwestern Railroad Co. v. Rice*. Ibid. 358: reversed, 1 Bl. 358.

The grant of lands to the Central Pacific Railroad Company, conveyed a present title to all the granted lands then unappropriated. *Central Pacific Railroad Co. v. Dyer*, 1 Saw., 641.

SEISIN AND POSSESSION.

Possession by a party claiming the fee, is *prima facie* evidence of his ownership and seisin. *Ricard v. Williams*, 7 Wh., 59.

Possession alone, unexplained by circumstances which show the quality and extent of the interest claimed, is evidence of no more than the mere fact of present occupation, by right. Ibid.

But if the party be in under title, and by mistake of law, suppose himself possessed of a less estate than really belongs to him, the law will remit him to his full right and title. Ibid.

It is a general rule, that a disseisor cannot qualify his own wrong, but must be considered a disseisor in fee; but this rule is introduced only for the benefit of the disseisee, for the sake of electing his remedy. Ibid.

And it must also appear that the party found in possession entered without right; for if his entry were congeable, or his possession lawful, his entry and possession will be considered as limited by his right. Ibid.

If a man having two titles, one defeasible and the other indefeasible, enter generally, the law adjudges that he entered under his better title. *Gardner v. Sharp*, 4 W. C. C., 610.

In ejectment, possession accompanied with a claim of ownership in fee is *prima facie* evidence of such an estate. *Sparkman v. Porter*, 1 Pa., 457.

But such effect is limited to the claim actually made, and a claim of a different kind cannot be set up, for the purpose of aiding the first. Ibid.

If a party, with title, enter into lands his seisin is co-extensive with his title. *Green v. Liler*, 8 Cr. 229. *Peyton v. Stith*, 5 Pet., 485. *Ellicott v. Pearl*, 10 Pet., 412. s. c. 1 McL., 206. *Prescott v. Nevers*, 4 Mas., 326. *Sparkman v. Porter*, 1 Pa., 458.

But if one enter without title his seisin is confined to his possession by metes and bounds. Ibid. *Sparkman v. Porter*, 1 Pa. 458. *Fraser v. Hunter*, 5 Cr. C. C., 470.

Under a conveyance taking effect under the statute of uses, the bargainee has a complete seisin in deed, without actual entry or livery of seisin. Ibid.

If the purchaser of an undivided part of a tract, enter upon the whole, under his equitable title, the possession being under the legal title, the holder of it, by such entry acquires an actual seisin. *Barr v. Gratz's Heirs*. 4 Wh., 213.

An actual entry upon part gives a constructive seisin of the whole tract to which the title extends. *Ibid.* s. p. *Clarke v. Courtney*, 5 Pet. 319. *Miller's Heirs v. McIntyre*, 6 Pet. 61. *Sicard v. Davis*. *Ibid.*, 124.

But not if any part were in the actual possession of one having a better title. *Ibid.* *Ibid.*

In such case the seisin under the better title extends to all not actually occupied by the other. *Ibid.* *Hunt v. Wickliffe* 2 Pet., 201. *Clarke v. Courtney*, 5 Pet. 319.

An entry without title works a disseisin only of so much as is actually occupied. *Ibid.*

Where there is no visible adverse seisin of any part of the land, an entry by one of the several co-tenants, gives a seisin of the whole according to their titles. *Thomas v. Hatch*, 3 Sum., 170.

An entry is an ouster or not according to the intent with which the act is done; if made under color of right, it is an ouster, otherwise, a trespass only. *Ewing v. Burnet*, 11 Pet., 41.

The legal title draws to it the legal seisin and possession, until displaced by an actual ouster. *Ibid.*

The right of a party in possession to the land claimed, cannot be tried collaterally, by setting off a claim for rent, against a legacy bequeathed to him by the alleged owner. *West v. Smith*. 8 H., 402.

An enclosure is not indispensable to constitute possession; it is but one of the acts, from which an intent to assert ownership, and exercise possession, may be inferred. *Ellicott v. Pearl*, 10 Pet., 412. s. c. 1 McL., 206.

Payment of taxes for more than twenty-one years, without adverse possession gives no color of title, though it defines the extent of a claim. *Girard v. Philadelphia*, 2 Wall Jr. C. C. 301.

A mere entry to run lines does not amount to a disseisin. *Ibid.*

At common law, a party could not convey land, in the adverse possession of another. *Bradstreet v. Huntingdon*, 5 Pet., 402.

Adverse possession may be set up against any title whatever, to show the nullity of a conveyance executed by one out of possession. *Ibid.*

Possession, though adverse, does not affect the title, except under the statute of limitation. *Fields v. Squires*, 1 Dedy, 366.

Possession by the defendant of a wharf, under color and with claim of title, is sufficient to put the plaintiff to proof of a better title, or of an equal right to its use. *Linthicum v. Ray*, 9 Wall. 241.

Possession is presumed to be rightful until the contrary appear, and therefore, adverse to the title of any other claimant. *Stark v. Starr*, 1 Saw., 15.

A formal conveyance gives color of title to one claiming under it. *Ibid.*

A seisin in fee gives a constructive possession, and the party will be presumed to be in actual possession until the contrary appear. *Lamb v. Burbank*, 1 Saw. 227.

RESERVATIONS.

A military reserve may be abandoned by the government when it becomes useless for public purposes, and on due notice to the Secretary of the Interior, will be open to entry as other public lands. *United*

States v. Railroad Bridge Co., 6 McL., 517; *Illinois Central Railroad Co. v. United States*, 20 Law Rep., 630.

The reserve in Rock Island, though surveyed, never having been offered for sale, did not come within the acts of 1852, authorizing railroad companies to locate their roads through the public lands. *Ibid.*

The act of 1819, authorizing the sale of military reservations which had become useless, embraced only those lands which had been reserved and become useless at the passage of the act. *Ibid.*

A recital in a deed of such land, that it had become useless for military purposes, is evidence of abandonment. *Illinois Central Railroad Co. v. United States*, 20 Law Rep., 630.

The act of 1856, in connection with subsequent legislation, operated to reserve, for the purpose of aiding in the improvement of the Des Moines river, an equal moiety, in alternate sections, of the public lands, on or within five miles of the said river, between the Raccoon Fork and the northern boundary of Iowa. *Wolcott v. Des Moines Co.*, 5 Wall., 681.

Effect of a reservation of the right to use the land for fortifications *Josephs v. United States*, 1 N. & H., 197.

A military occupation without the knowledge of the President or Secretary of War, is not a reservation, within the meaning of the Oregon donation act. *Johnson v. United States*, 2. N. & H., 391.

The President may reserve from sale, and set apart for public use, parcels of land belonging to the United States; and he may modify, by reducing or enlarging it, a reservation previously made. *Grisar v. McDowell*, 6 Wall, 363.

That he has made the modification, as a compromise of an opposing private claim, does not invalidate the reservation. *Ibid.*

A patent or instrument of confirmation, by an officer duly authorized to make it, followed by a survey, is conclusive evidence that the land was reserved from sale. *Richard v. Phelps*, 6 Wall, 160.

Lands specially reserved from sale become segregated from the public domain; and a "squatter" thereon cannot recover ground-rent against his lessee, for the use of such lands; his lease being void, as against public policy, and the lessee not being estopped from denying his landlord's title. *Dupas v. Wassell*, 1 Dill., 213.

The location of a floating warrant on any part of the Shawnee reservation, conferred no right or title, under the treaties with that tribe, prior to its being thrown open to pre-emption and settlement on the 9th July, 1858. *Walker v. Henshaw*, 5 Chicago Leg. News, 433.

TITLE II.—HOMESTEADS.

I. IN GENERAL.*

(4) ENTRY AND COMMUTATION.

No. 273.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 21, 1870.

GENTLEMEN:—In order to secure uniformity in the administration of the Homestead Law, you are hereby directed, in regard to the Homestead affidavit, that where it is made before the clerk of the County Court the rule laid down in Section 3 of the Amendatory Homestead Act of March 21, 1864, must be strictly observed, in which rule it is stipulated the parties shall satisfactorily show in the testimony that their family, or some member thereof, is residing on the land they desire to enter, and that a *bona fide* settlement and improvement have been made, and showing further the cause of their inability personally to attend at the district land-office. The affidavit must be made before the clerk of the Court for the County in which the land is situated.

Very respectfully,

JOS. S. WILSON, *Commissioner*.

REGISTERS AND RECEIVERS, U. S. LAND OFFICES.

No. 274.

B. W. WILSON.

A party cannot initiate a homestead claim to land covered by an uncanceled prior homestead entry.

A qualified party may settle as a pre-emptor on unsurveyed land; and when it is surveyed, and his declaratory statement filed, he may commute his pre-emption claim to a homestead entry.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., June 20, 1871.

SIR:—I have considered your two letters in relation to the homestead law—one of the 20th of January last, addressed to the Department, and transmitted through Senator Corbett; the other of 18th February last, addressed to him, and referred by him to the Department. They appear to raise three questions, which are in substance as follows:

1st. Has a party the right under the homestead law to go upon a

* For general instructions under the Homestead Laws see Title I., No. 265.

tract of surveyed land embraced in a pre-existing entry under that law by another party, if not followed up by the latter with the legally required settlement and cultivation? and does the settler thereby acquire a right to the land from the date of his settlement? and should he, upon making proof of abandonment and cancelling the pre-existing entry, be on that ground allowed to enter the land as a homestead to the exclusion of any other applicant therefor, or of any grant by act of Congress for any work of internal improvement or other object, if subsequent to the date of his settlement?

As to this I am of opinion that land once entered as a homestead under the act of 1862 is not open to settlement until the entry has been cancelled upon proof of actual change of residence and abandonment for six months at any one time. When the entry has been thus cancelled the land reverts to the Government, and again becomes liable to either pre-emption or homestead entry. The act of 1862 gives to a qualified person the right to enter unappropriated public lands upon which he has filed a pre-emption claim, or any land at the time of his application subject to pre-emption at one dollar and twenty-five cents per acre, &c. This land so entered is not to be patented until five years after entry, and then upon proof of settlement and cultivation for five years immediately following the date of the oath filed upon making the entry. The settler does not lose his right to the land unless he actually changes his residence or abandons the land claimed for six months at any one time. In either of which events, upon proper proof to the register, "*the land so entered shall revert to the Government.*" The intention of Congress, as expressed in this act, was to dispose of the unappropriated surveyed lands of the Government to such persons as would cultivate, improve, and make them their homes, and to this end it allows them to enter the land and gives them a title, incomplete, of course, but one of which they cannot be divested except in the manner pointed out in the statute. I do not think that a settlement made after homestead entry, and before the same has been cancelled, is of any value to the settler, because his settlement is upon land recognized by the Government as the land of another. Until after the expiration of the time in which the settlement and cultivation can be proved the Government will presume the homestead claimant is acting in good faith, unless the contrary is shown in the way pointed out by the statute. This view of the law seems to have been entertained by Mr. Secretary Harlan in his ruling of 22d June, 1866.

2d. Has the settler upon unsurveyed lands the right to enter the tract covered by his settlement as soon as surveyed, to the exclusion of adverse claims under the provisions of the homestead law?

I am of opinion that unsurveyed lands, as such, are not subject to homestead entry. The act of 1862 in terms limits homestead entries to surveyed lands; "and after the same shall have been surveyed" is the language of the statute. But when a pre-emption settlement has been made on unsurveyed lands, followed after survey by the filing of a declaratory statement, the settler is at liberty to commute to a homestead entry. I am aware that Mr. Secretary Harlan (copy of his letter herewith enclosed) limited such commutation to pre-emption settlements on surveyed lands; but the limitation seems to me not to be countenanced by the homestead act, which gives a qualified person the privilege of entering any unappropriated public lands upon which "he may have filed a pre-emption claim." The pre-emption laws allow him to settle

upon unsurveyed lands; and when they are surveyed, and his declaratory statement is filed, his right attaches from the date of his settlement.

3d. Is the claim of Mr. Bowman prejudiced by the grant of certain public lands to the Corvallis and Ocquina Military Road Company?

As this is a case which may possibly come before me on appeal, I do not feel at liberty to express an opinion as to its merits upon an *ex parte* statement of the facts.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

B. W. WILSON, Esq., *Corvallis, Oregon.*

No. 275.

GREGORY v. KIRTLAND.

Parts of two quarter sections separated by a meandered stream, cannot be embraced in one homestead entry.

An application handed to the Receiver after office hours on the street, without the fee, is not a legal application.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 8, 1871.

REGISTER AND RECEIVER, *Little Rock, Ark.*

GENTLEMEN:—In the matter of contested homestead entry, No. 3015, dated May 16, 1870, for the fraction of the N. W. $\frac{1}{4}$ north and east of Cesche Bayou, in Sec. 12, T. 6. N. of R. 4. W., containing 51.78 acres, I find the following facts to exist: R. M. C. Kirtland claims the right to enter said tract on the ground that he was the first legal applicant.

It appears from Mr. Kirtland's statement that he applied to enter the N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ and the E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 12, Tp. 6, N. R. 4 W.

Upon referring to the map, I find no such subdivision as the E. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ of Sec. 12, Tp. 6, N. R. 4 W., exists, the said N. W. $\frac{1}{4}$ being subdivided into fractions or lots by reason of a meandered stream passing through it, to wit: Cesche Bayou, and so much therefore of Mr. Kirtland's application is erroneous in description. In addition to the above I find that the S. W. $\frac{1}{4}$ is separated from this portion of the N. W. $\frac{1}{4}$ now in controversy, by said meandered stream; and parts of two quarter sections separated or divided by a meandered stream cannot be embraced in one homestead entry.

It appears further that Mr. Kirtland did not file his application in your office, but handed it to the Receiver on the street after office-hours, without the required fee, and it was not therefore a formal or legal application.

Prior to the payment of the entry fee by Mr. Kirtland, Nathan Gregory applied for in due form, and entered the tract now in controversy, per homestead entry, No. 3015, and your action in allowing said entry and rejecting the application of Mr. Kirtland is sustained by this office, and the contest against homestead entry No. 3015 is hereby dismissed.

You will notify the parties in interest of the action of this office, and allow the contestant 30 days in which to appeal to the Hon. Secretary of Interior, should he so desire.

Respectfully,

W. W. CURTIS, *Acting Commissioner.*

No. 276.

THOMAS THOMPSON.

The entry of a minor, not the head of the family, is void *ab initio*, and does not exclude him from making a legal entry on attaining his majority.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Sep., 26, 1874.

GEORGE STICKNEY, Esq., *Elk Point, Dakota Territory.*

SIR:—In a letter "C," from this Office, dated April 15, 1874, addressed to you, in reply to your letter of the 26th of February prior, relative to the case of Thos. Thompson, who made homestead entry, No. 795, Vermillion series, while a minor, and, pending the contest instituted against the same on the ground of illegality, relinquished it, a decision was rendered to the effect that he had thereby exhausted his rights under the homestead laws, and his application to be allowed to make a new entry, having arrived at the required age, was denied.

The question as to the rights of a minor similarly situated as was Mr. Thompson having again been brought before this Office, the papers submitted with your letter in the case referred to have been re-examined, and the decision involved in said letter "C" reviewed. It appears that Mr. Thompson made said entry with a full knowledge of his minority, but was impressed with the erroneous assurance of the district land officers that it has been held by this Office that he could legally make the entry as "the head of a family," he having a number of laborers employed under his direction. It is not deemed necessary to inquire into the truth or error of the representations made to Mr. Thompson, upon which he made said entry, but the fact that he relinquished the same to avoid the expenses of a contest, feeling assured that it was illegal, should not deprive him of the homestead privilege after arriving at his maturity. The original entry was cancelled upon the evidence of its relinquishment having been presented, without any testimony showing that the entry was void in its initiation, a knowledge of which would have rendered the relinquishment unnecessary in order to have affected the cancellation of the entry.

You will therefore advise Mr. Thompson that on proper application he will be allowed to make a homestead entry upon any public land subject to the same, upon payment of the required fee and commissions.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 277.

MARONI DE GRAW.

A homestead cannot be commuted in part.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 13, 1874.

REGISTER AND RECEIVER, *Salt Lake City, Utah.*

GENTLEMEN:—I have to call your attention to Maroni De Graw's cash commutation entry No. 1282, dated December 6, 1873, for lots 3 and 4, of sec. 19, 9 S., 2 E., being only half of his homestead, No. 428, which is for the E. $\frac{1}{2}$, S. W. $\frac{1}{4}$, and lots 3 and 4, of said sec. 19.

You will please inform him that a homestead cannot be commuted in part, but must be, if at all, as a whole; and that he will be allowed sixty days in which to pay for the remainder. If he should do so, the register will thereupon amend the duplicate herewith returned, so as to embrace the entire homestead, and the receiver will issue a supplemental receipt for the balance of the money due, referring to the former payment. If the party fails to make the payment required, you will report the matter to this Office at the expiration of sixty days for further action thereon, and return the certificate.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

See No. 294.

No. 278.

JOSE SANCHEZ.

The term settler, as used in the acts of May 30, 1862, and March 3, 1871, Part II., No. 36, includes all persons who have settled in good faith, and desire a survey in order that they may perfect or initiate titles, though it is not held that a homestead privilege is conferred prior to survey.

A deposit, under the above acts, made by a settler who intended to claim under the homestead law for the purpose of securing a survey, and who afterwards entered the land and then commuted, should be received in part payment for the land.

A homestead claimant in his commutation may change the description of the land so as to place his entire claim within the township surveyed, if the change is immaterial, and does not affect any adverse claim.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 1, 1874.

SIR:—I have examined the appeal of José Sanchez from the decision of your office of November 12, 1873, holding for cancellation his homestead entry, commuted to cash entry, for certain lands in section 31, T. 17 S., 70 W., Pueblo, Colorado.

The facts in the case are recited at length in your decision. The appeal raises a question of law relative to the construction of the 10th section of the act of Congress entitled "An act to reduce the expenses of the survey and sale of the public land in the United States," approved May 30, 1862, (12 Stat., 410,) and the act amendatory thereof, approved March 3, 1871. (16 Stat., 582.) Your office held that the beneficial provisions of these statutes extended only to pre-emption settlers, and did not embrace a settler who, like Sanchez, after making the deposit required, obtained a survey, entered the land as a homestead, and then commuted to a pre-emption filing. It is from this ruling that appeal has been taken.

While it is technically true that a homestead claimant, in a case like that under consideration, is not, prior to his entry, "a settler" within the ordinary and established acceptation of that term, yet I am of the opinion that such a claimant should be considered as within the provisions of the acts in question. The term settler, as therein used, seems not to be limited to claimants who have settled by virtue of the provisions of some act of Congress, and have no means of perfecting their titles because of the status of the land, but rather to include all persons who have settled in good faith, and desire a survey in order that they may perfect or initiate titles. The object of Congress in passing the

act of 1862 was evidently to hasten the settlement and improvement of the public lands while reducing the expenses of the public surveys, and there was clearly no reason why the remedy provided should not, and every reason why it should, include this most meritorious of all classes of settlers. So far as the act of 1862 itself is concerned, it makes little difference which construction is adopted, for the public lands are at once, upon survey, open to homestead settlement, and it is not intended herein to hold that this act conferred a homestead privilege prior to survey. But the question becomes pertinent and material when, under the amendatory act, a deposit made is sought to be used in commutation payment of a homestead claim.

The act of 1871 adds a section to that of 1862, which section provides "that in all cases where settlers shall make deposits *in accordance* with this act," such deposits shall go in part payment of their claims. I think a deposit made by a settler, who intended to claim under the homestead law for the purpose of securing a survey, and who afterwards entered the land and then commuted, is a deposit in accordance with the act of 1862, and that the same should be received in part payment for the land.

The decision of your office is also adverse to the claimant upon another ground, viz: that in his commutation he changed the description of the land claimed so as to place the entire one hundred and sixty acres in township No. 17, whereas part of the original claim was in township No. 18. The change in question was immaterial, did not affect any adverse claim, and seems to have been one to which the claimant was equitably entitled under the view of the law I have taken, for the reason alleged, viz: that the deposits made could not, under the act of 1871, be applied in part payment of lands not included in Township No. 17, for the survey of which the same was made.

The equities of the case are all upon the side of the claimant, and I think the law itself protects him.

I therefore reverse the decision of your Office and award him the land in contest, returning herewith the papers transmitted with your letter of February 10, 1874.

Very respectfully,

C. DELANO, *Secretary.*

HON. S. S. BURDETT, *Commissioner of the General Land-Office.*

No. 279.

SARAH E. DEMMOND.

The claimant is a married woman.

Held—That a married woman is *prima facie* incompetent to make a homestead entry. That to entitle her she must show that she has been abandoned by her husband without cause and compelled to support herself and family.

Decision by Acting Secretary Cowen, July, 8, 1871.

See No. 346.

No. 280.

ELLA NELSON.

A married woman deserted by her husband made a homestead entry and provided means for improving and cultivating the land embraced therein. Notwithstanding her husband's return, she will, upon making satisfactory final proof, receive the patent in her own name.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 26, 1874.

MR. FRED. W. STURGES, *Concordia, Kansas.*

SIR:—In reply to your letter of the 16th ultimo, relative to the case of Ella Nelson, who made homestead entry No. 6,439 on the N. E. $\frac{1}{4}$ of sec. 21, Tp. 5 South, of R. 5 W., at Concordia, February 14, 1872, I have to state that, as per the statements contained in your letter when making said entry, Ella Nelson was the head of a family, her husband having deserted her more than one year prior to making the same, and she has for more than three years years last past supported herself and children, as well as provided the means for making said entry and for carrying on the improvements and cultivation of the land whereon she has continued to reside, which acts she has continued to perform since the return of the husband a short time since, it is held by this office that Ella Nelson is entitled at the expiration of five years from date of entry to make final proof thereon, and should the same prove satisfactory, patent for the land would issue in her name.

The return of the husband to the wife whom he had deserted for the period named, and had utterly failed during that time to provide for her support and that of the children, would not invalidate the rights of the wife under the homestead laws which were acquired during the period of his desertion.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 281.

W. H. WERDELANGE.

A single woman who makes an entry under the homestead laws does not forfeit her rights by marriage, provided the requirements as to settlement and cultivation are complied with.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Feb. 10, 1874.

HON. M. K. ARMSTRONG, *House of Representatives, Washington, D. C.*

SIR:—I am in receipt of a letter from W. H. Werdelange, addressed to you and referred to this Office for answer, relative to the rights of a single woman who had made an entry under the homestead laws, and marries before acquiring title to the land.

In reply, I have to state that the party referred to does not forfeit her rights under the homestead laws by marriage, provided she fulfils the requirements of the statute as regards settlement and cultivation of the land embraced in her homestead entry.

Mr. Werdelange's letter is herewith returned.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 282.

(B) RESIDENCE AND CULTIVATION.

ABRAHAM RIDER.

The only question is, whether residence on the land is essential.

Held—That it is essential: that the language in the second section, act of May 20, 1862, "or cultivated the same," is intended to apply to the proviso in the 1st section, which does not require residence. In all other cases, except that mentioned in said proviso, residence is essential.

DEPARTMENT OF JUSTICE,
OFFICE OF THE ASST. ATTY. GEN'L.,
Washington, Oct. 18, 1871.

SIR: I have considered the case of the alleged abandonment by Abraham Rider of his homestead entry of the E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 6, Tp. 96 N. R. 32, W., Ft. Dodge, Iowa.

The local officers held that the charge of abandonment was sustained, and their decision was affirmed by the Commissioner.

Rider has appealed to the Secretary. It appears from the evidence, and is admitted by Rider, that he never resided upon the land prior to the day of trial. He has cultivated a portion of it for two years, but during that time he resided with his son, on an adjoining $\frac{1}{4}$ section, owned by the son.

The case presents the single question whether residence upon the land is an essential element in a homestead claim, or whether cultivation without residence is sufficient.

I am of opinion that residence is essential. The homestead act is entitled "An Act to secure homesteads to *actual settlers* on the public domain." The second section provides that the applicant shall make affidavit, among other things, that his "entry is made for the purpose of *actual settlement* and cultivation"

The fifth section provides that the land shall revert to the government upon its being proven that the claimant shall have actually changed his or her residence, or abandoned the said land, for more than six months at any time. The residence here spoken of is residence upon the homestead tract. These express provisions are not, in my opinion, to be overcome by the clause in the second section which requires the claimant to prove by two credible witnesses, that he has "resided upon, or cultivated the same for the term of five years." The word "or," in that section was intended to apply to the case provided for in the proviso, to the first section where the right is given to one who owns and resides on an adjoining tract to enter under the homestead act other land lying contiguous, not exceeding in the aggregate one hundred and sixty acres. In such a case, residence on the land, sought to be entered as a homestead, is not essential. In all others it is.

I am of the opinion that the Commissioner's decision in cancelling Rider's entry was correct, and recommend that it be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, Oct. 21, 1871.

No. 283.

WALDO v. SCHLEISS.

Schleiss was an unmarried Bohemian girl. She made homestead entry Dec. 29, 1869, and April 3, 1870, moved into a sod house on the land. This was a very poor dwelling. She lived in it. At intervals she worked out for others. She broke 14 acres in the summer of 1870, and 5 more in the fall. Commenced building a block house.

Held—That her residence was sufficient; that actual residence is required upon the land within six months of entry and that a total abandonment for six months will forfeit the claim, but that remaining upon the land continuously is not absolutely necessary.

The question under Sec. 5, Act of 1862, is that of removal or abandonment rather than one as to the sufficiency of residence originally.

(Principle reaffirmed in case of Tully v. Powell, July 28, 1873.)

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, June 2, 1871.

SIR: I have considered the appeal from the decision of the Commissioner of the General Land-Office in the case of Ardin Waldo v. Ann Schleiss.

The land in controversy is the S. $\frac{1}{2}$, S. W. $\frac{1}{4}$, T. 6, R. 4 E., Beatrice, Nebraska.

Ann Schleiss, December 29, 1869, entered as homestead the land in controversy.

On the 5th of September, 1870, a hearing was held before the Register upon the complaint of Ardin Waldo, charging her with having abandoned her homestead. The Register decided that the proof did not sustain the charge of abandonment. The Commissioner overruled the decision of the local officer and adjudged the claim forfeited. Ann Schleiss appealed.

The evidence shows most conclusively that the claimant acted in perfect good faith in entering the land, and in her subsequent settlement and improvement. It appears to be only a question of the sufficiency of her settlement and cultivation, under the Homestead law. The claimant is a Bohemian girl, and at the time of the investigation, was about twenty-two years of age. The land was entered by her as Homestead, December 29, 1869. April 3d, 1870, she moved into a sod house which was there upon the land. This sod house was a very poor, dilapidated structure, but still one that could be used as a dwelling. She lived in this house at this time six days while putting in a crop of grain, aided by some men whom she had employed to do this work.

After the sowing was done she returned to her father's house, which was about half a mile from the claim. She returned to the claim in July, where she remained several days, while the crop was being harvested. During the summer of 1870 she had about fourteen acres of ground broken, and under cultivation, and in August of the same year, she had five more acres plowed, some of which was sowed in rye. During the summer she commenced to build a block house, which, however, remained unfinished at the time of the hearing. She swears that the house on the land belongs to her, that she has never abandoned her claim and that she has never been away from the land since she entered it except to the distance of half a mile to her father's house, where she worked.

In answer to the question whether she made a continuous residence upon the Homestead, she replied: "I stay there the best I can." Her

own evidence is sustained by that of her father, brother and three men, who aided her in sowing and harvesting the grain. She appears to have endeavored in good faith to make the tract her home, and she has done so, as far as could be reasonably expected of a woman under such circumstances. The only question seems to be, is such settlement sufficient under the Homestead law.

The act of 1862 should receive a liberal construction. It was the intention of Congress to give homesteads to those persons who in good faith would settle upon and cultivate unappropriated public land. In order to protect the Government from imposition by mere speculators, it was deemed necessary to require clear proof of the intention of the claimant to make the land in good faith his home. An abandonment for six months or an actual change of residence were either of them deemed sufficient evidence of the want of such an intention, and it was therefore provided that in either of these cases, upon proof of the fact, the land should revert to the Government. To give homesteads to *bona fide* settlers honestly intending to appropriate them to their own use, and to protect the Government from imposition and fraud while so doing, seem to me to have been the two great objects contemplated by the framers of the statute. Whenever a case is presented which conforms to the spirit of the law in these two particulars, the land should be patented to the claimant. The case of Ann Schleiss is just such an one as in my opinion the law was intended to cover. She undoubtedly intended in good faith to appropriate the tract of land to her own use, to cultivate, live on and improve it. She has shown settlement, a considerably extended cultivation, and an actual occupancy of the land for limited periods. She swears that she considers it her home, that she owns the house upon it; that she has never abandoned it, and that she lives on it "the best she can." She is an unmarried woman, and can scarcely be expected to live continually upon the land, alone, removed from friends and isolated from all society; and yet she is just the person that the homestead law in its spirit grants a home.

I am of opinion that a residence upon the land is required to be made within six months of the entry, and that a total abandonment at any time thereafter for six months will forfeit the claim; but I do not think that in every possible case an actual personal continuous residence is indispensably necessary.

Where a person, although not at all times on the land, has no other recognized home and claims and improves the land entered, in all respects showing that his claim is made in good faith, and without any taint or suspicion of fraud, I am of opinion that he has fulfilled the requirements of the statute.

The Commissioner appears to have founded his decision adverse to claimant on the proof of defective settlement and cultivation, not on proof of abandonment or change of residence. The fifth section of the act of 1862 is as follows: "That if at any time after filing of the affidavit as required in the second section of this act, and before the expiration of the five years aforesaid, it shall be proven after due notice to the settler to the satisfaction of the Register of the Land-Office, that the person having filed such affidavit shall have actually changed his or her residence, or abandoned the land for more than six months at any time, then and in that event the land so entered shall revert to the Government."

In the investigation before the register under this section, the main

question to be considered was that of *removal* or *abandonment*. It seems to me that the sufficiency of the residence under the second section was not the question for determination. That is a matter to be settled at the expiration of the five years. In an examination under section five the question is, "Has there been a removal or abandonment?" If decided in the affirmative, the land reverts to the Government. If in the negative, the claimant continues in possession until such time as is required by law to make his final proof.

I recommend that the decision of the Commissioner be reversed and that of the local officers be affirmed.

Very respectfully,

WALTER H. SMITH, *Asst. Atty. General*.

HON. C. DELANO, *Secretary of the Interior*.

Concurred in by Acting Secretary Cowen, June 2, 1871.

No. 284.

BAKER v. HESS.

Baker pre-empted and afterward commuted to a homestead. Being a poor man he was obliged to leave his homestead and work for others. He left for temporary purposes, intending to return. He did start to return within six months from the time of his leaving, but did not reach his claim until after the expiration of six months.

Held—That under the peculiar circumstances of this case he did not close his claim.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, July 7, 1871.

SIR:—I have considered the case of George E. Baker v. Alexander Hess. Land in controversy W. $\frac{1}{2}$ of S. W., $\frac{1}{4}$ Sec. 12, T. 10. N., R. 9 E., Lincoln, Nebraska.

George E. Baker, June 21st, 1869, entered the land in controversy as a homestead. Alexander Hess, March 14th, 1870, entered complaint before the Register, charging Baker with having abandoned his land. Baker did not appear at the hearing, and the Receiver, thinking the evidence sustained the charge of abandonment, so reported to the Commissioner, who ordered the cancellation of the homestead entry.

Baker applied for a re-hearing, and, by evidence produced before the local officers, convinced them that he had never abandoned the land, and that he could have shown this at the time of the investigation if he had been present. They, thereupon, recommended the restoration of his homestead.

On the 27th of October, 1870, in a letter to the local officers, the Commissioner adhered to his first decision. Baker appeals.

The evidence given in the second examination before the Register, although in some points conflicting, shows, I think, that Baker did not abandon the land.

He originally settled as a pre-emptor and filed a declaratory statement as such, but not being able to pay for the land, changed his pre-emption claim to a homestead entry.

Before the entry he had erected a rude sort of a dwelling composed

of sod sides two feet and a half high, with the cover of his carriage or wagon for a roof.

It is shown by the evidence that he was a poor man and unable to build a better house. He lived in this shanty with his wife and children from May, 1869, until the middle of the following October. His wife and child were taken sick; he had nothing with which to support his family during the winter months, and his house was unfit for them to live in. He left the land, announcing his intention to seek work during the winter in Iowa, and to return to the land in the spring. He made arrangements with one of his neighbors to look after the land and put in a crop in the spring. He distinctly declared his intention to return within six months. He left the land some time in August, and took his wife and child to a neighbor's house. He worked upon his claim, however, until the 16th of October, when he started with his family for Iowa. He went to his father-in-law's house, where he remained during the winter. About the middle of April he started with his father-in-law to return to the land, where they arrived about the 2d or 3d of May. It is shown that it was impossible for them to start before, on account of high water and bad roads. On arriving at the land he found that a complaint had been made by Hess, and that evidence of abandonment had been taken and forwarded to Washington. He applied for a rehearing, and produced the evidence that led the local officers to recommend a restoration of his homestead. He is now living on the land, has built, aided by his father-in-law, a pine-board house; has about thirty acres in all broken, and has set out maple trees and currant bushes. He is a poor man, and appears to have occupied the land in good faith to the best of his ability. He left the land to work during the winter, but this, as one of complainant's own witnesses swears, was a usual thing among the settlers in that vicinity. There was at no time a period of six months during which he did not evince an intention to make the tract his home. The first examination was made within six months of his last previous cultivation, as proven by the subsequent examination. He left the land October 16th, 1869, and before the expiration of six months was on his way back to it in accordance with a previously expressed intention. That he did not reach it within six months of his departure was not his fault.

The notice citing him to appear at the first examination, was not served personally, but posted upon the land. The first he knew of the matter was the fact that testimony had been taken and sent to Washington. He then produced the evidence from which the facts above recited are derived. I am of opinion that in the second examination he disproved the charge of abandonment, and established his right as a *bona fide* homestead claimant; and as the second examination was the first chance he had to defend his claim, I think the testimony then taken should be allowed its full force and effect.

I therefore recommend that the decision of the Commissioner be reversed, and that Baker's cancelled entry be restored.

Very respectfully,

W. H. SMITH, *Asst. Att'y Gen'l.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by the Secretary, July 11, 1871.

No. 285.

ARNOLD AND THORNTON.

The two tracts claimed as homesteads are contiguous. The only house on the tracts was one directly on the line, and intended to be used as a residence by both.

Held—That this was not such a residence as satisfied the homestead law.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., January 31, 1872.

SIR:—I herewith return to your office the papers and testimony in the cases of the contested homestead entries of Fanny Arnold and Fanny Thornton, cancelled by your decision of September 25th, 1871, on the ground of abandonment.

In a controversy under the 5th section of the Homestead Act, the *onus probandi* is upon the contestant to prove abandonment or change of residence. In the case under consideration the evidence is hardly sufficient, under this rule, to sustain an allegation of either change of residence or abandonment. But it is clearly shown that the two tracts claimed are contiguous quarter sections, and that if either of the claimants resided on the land claimed within six months of entry, it must have been in a house situated directly on a line between the two tracts and intended to be used as a *residence on both*.

This is not such a residence as will satisfy the requirements of the Homestead law, and taken in connection with the fact that no actual occupancy within six months is shown by the claimants, although clearly in their power so to do, if such were really the fact, is strong evidence of bad faith.

I therefore affirm your decision cancelling the entries.

Very respectfully,

B. R. COWEN, *Acting Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 286.

WILLIAM S. HEADLEE.

Residence in a double house, built on the dividing line between adjoining homesteads, is residence in compliance with the law.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., June 19, 1874.

MR. WM. S. HEADLEE, *Silver Glen, Neb.*

SIR:—I am in receipt of your letter of the 2d instant, stating that yourself and brother have made homestead entries which adjoin each other and have built a house on the dividing line between the two; that your brother lives in that part thereof which is on his claim, while you live in the part on your own homestead.

You now desire to know whether living in this double house, as above described, is a compliance with the law.

In reply I have to say that by the decision of the Hon. Secretary of the Interior, under date of June 18, 1873,* it is held that where a house is built upon the dividing line between two different claims, a pre-

* See No. 362.

emption settler living in the part thereof on his own claim thereby has "a legal residence" on such claim.

This Office holds that the same principle applies in homestead cases.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 287.

JOSEPH FISHER.

After a homesteader has completed the term of five years, a further residence is not required to entitle him to patent.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 10, 1874.

Mr. JOSEPH FISHER, *Baldwin City, Mich.*

SIR:—In answer to your letter of the 26th ult., I have to say that a homestead settler under act of June 8, 1872, may make proof at such time as his period of actual settlement and cultivation, not less than one year, added to his term of military service, will make five years. After the party has completed the term of five years, as above described, a further residence upon his homestead is not required by law to entitle him to patent, provided satisfactory proof be made within seven years from date of entry.

Very respectfully,

W. W. CURTIS, *Acting Commissioner*.

(c) AMENDMENT.

No. 288.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 5, 1872.

GENTLEMEN:—Hereafter, when parties make application to be allowed to amend their respective Homestead papers, on the ground that they do not describe the land they intended to apply for, and have actually settled upon; or, in case they relinquish their entries, in view of prior conflicting claims, you will, in all cases, require them to file papers with you, as follows; and, in all cases, you will require their papers to be filed before transmitting the applications:

1st. The affidavit of the party setting forth that he had, within six months from date of his original application, actually settled on described tract, giving in full the character of the improvements made.

2d. Said affidavit to be corroborated by those of two witnesses.

3d. If a party desires the cancellation of his entry on account of a prior legal claim having attached to the land so entered, you will require—

1st. The filing of his affidavit, giving the number, date, and nature of the prior claim, and the extent of the improvements, if any, which may have been made.

2d. The facts, as alleged in said affidavit, to be corroborated by two witnesses.

3d. In transmitting the papers to this office you will, in each case, make a joint report.

Be pleased to acknowledge the receipt of this circular.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 289.

THOMAS C. MARKS.

A homestead party whose entry is cancelled in part for conflict, may retain the remainder, and amend his entry to embrace a contiguous vacant tract.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Feb. 20, 1875.

REGISTER AND RECEIVER, *Denver, Colorado*.

GENTLEMEN:—Referring to homestead entry 2953, Thomas C. Marks, S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ and E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ Sec. 20, and N. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ Sec. 29, 9 S. 66 W., in conflict with Mr. Evans' prior cash application No. 1768, to the extent of the S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ Sec. 20, as you were informed Nov. 16, 1874, I am in receipt of your letter of Jan. 20, 1875, stating that Mr. Marks elects to retain the E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ Sec. 20, and N. E. $\frac{1}{4}$ Sec. 29, and prays to be allowed to embrace in his entry the S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ Sec 20, to make up 160 acres, without payment of additional fee or commissions. You will notify the party that his request is granted, and that he will be allowed to write across the face of his application herewith, over his signature, the correct description of the 120 acres which he now has, and the S. W. $\frac{1}{4}$ S. W. $\frac{1}{4}$ said Sec. 20, after which you will attest the same, make your records agree therewith, and return the paper to this Office. His entry as originally made will then be cancelled to the extent of the tract in conflict, namely the S. E. $\frac{1}{4}$ N. W. $\frac{1}{4}$ Sec 20, and you duly notified thereof.

Very respectfully,

S. S. BURDITT, *Commissioner*.

No. 290.

THEO. C. CASEY.

Casey applied to enter 80 acres double minimum as a homestead.

After his application was received a change was made in the route of the railroad, and the land ceased to be double minimum, and was accordingly restored.

Casey thereupon asked to amend his entry, and include 160 acres.

Held—That his rights were fixed by the *status* of the land at the time he made his homestead filing.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, Oct. 24, 1871.

SIR:—I have considered the case of the application of Theodore C. Casey to amend his homestead entry of September 4, 1869, being E. $\frac{1}{2}$ N. W. $\frac{1}{4}$ Sec. 10, T. 8, S. R. 68, W. Denver, Col.

On the 4th day of September, 1869, Casey entered as a homestead eighty acres of double minimum land lying within the then twenty-five mile withdrawal limits of Kansas Pacific Railroad. After he had made this entry, to wit: on the 24th day of June, 1870, a material change in the route of the road having been made, certain lands which, by such change, had been thrown outside of the twenty-five mile limits, were restored to market as minimum lands. The homestead entry of Casey was within the first withdrawal limits, but outside of such limits as adjusted to conform to the change of the route.

Casey applied to amend his entry so as to include one hundred and sixty acres of land.

This application was rejected by the Commissioner, from whose decision he has appealed to the Secretary. The homestead act gives to a qualified applicant the right to enter "one-quarter section or a less quantity of unappropriated public land, upon which said person may have filed a pre-emption claim, or which may *at the time the application is made* be subject to pre-emption, at one dollar and twenty-five cents per acre; or *eighty acres* or less of such unappropriated lands at "*two dollars and fifty cents per acre.*" That is to say, the amount subject to entry shall be graduated so as to conform to the character of the lands, *at the time the application is made*, a quarter section of minimum or eighty acres of double minimum. A subsequent change in the character of the land would not, I think, either reduce the amount if the price was raised, or raise the amount if the price were reduced.

The intention of Congress was to give the applicant the full benefit of the act once, and not more, the quantity of land to be given to be governed by its character at the time of the application.

A similar case to the one under consideration has once before been decided by the Department in accordance with the view of the law I have expressed above. See decision of Secretary Browning, February 16, 1867.

I recommend that the decision of the Commissioner be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

Hon. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, Nov. 1, 1871.

No. 291.

BARNARD C. KILLIN.

A qualified party who voluntarily relinquishes a homestead entry in good faith, is not thereby debarred by the 6th Section, Act of May 20, 1862, from making another homestead entry.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, October 21, 1871.

SIR:—I have considered the application of Barnard C. Killin, being one to enter W. $\frac{1}{2}$ N. W. $\frac{1}{4}$ Sec. 20, T. 8, South, Range 63 W., Denver, Colorado, as a homestead. The case comes up upon appeal from the decision of the Commissioner of the General Land-Office, who refused to grant the application on the ground that Killin had voluntarily abandoned a prior entry on another tract, and had therefore exhausted his privileges under the Homestead Law.

Killin, June 6th, 1867, entered as a homestead a tract in Sec. 30, T.

8, S. R., 63 W., which he afterwards voluntarily relinquished, alleging as a reason for the abandonment a mistaken belief at the time of entry that there were certain springs of water on the land. Afterwards, to wit: on the 3d day of March, 1871, he made application to enter the land in controversy. His application was rejected by the Register, whose decision upon appeal was affirmed by the Commissioner.

The established rule of the General Land-Office, is to allow but one entry under the Homestead Law by the same individual. The only exception made is in the case of an entry cancelled on account of illegality or irregularity of the proceedings at the time it was made, and where title in the claimant failed without laches or fault of his own. This rule is established upon the theory that but one homestead right is given by the act, that a claimant having once made an entry has placed himself in the way of fully realizing all its benefits, and that if he fails to further comply with its provisions, and voluntarily relinquishes his entry, he forfeits all his rights and opportunities under the law.

The only provision to be found in the Homestead Act of 1862, or in the two acts amendatory of it, relating to this question, is the following clause in the 6th section of the Act of 1862:

"SEC. 6. And be it further enacted, that no individual shall be permitted to acquire title to more than one quarter section under the provisions of this act."

In my opinion this clause of the act does not call for the establishment of the rule above referred to, and I am unable to find any other provision of law to justify it. It is provided, that under the provisions of the Homestead Law no individual shall "acquire title" to more than one hundred and sixty acres of land. The mere entry gives the claimant no title to the land. He has only an inchoate right which is liable to be defeated by a failure to comply with all the requirements of the act. If he voluntarily abandons his claim, even this inchoate right is gone, so far as that particular tract is concerned. He has never, however, "acquired title" to the land, or any portion of it, and when he afterwards applies to make another entry, I cannot see how the clause above quoted can be so construed as to exclude him from the privileges and benefits of the act.

Neither, in my opinion, does the general spirit of the act justify the rule. This statute should be liberally construed, so as to give force and effect to the evident intention of Congress. To give to every competent person who, *bona fide*, desires it, a home from the public domain, with as little trouble and expense as possible, seems to be the paramount object of the law. No obstacle should be placed in the way of the accomplishment of this object, except the establishment of such rules and regulations as are necessary to protect the Government from imposition and fraud. The rule of the Land-Office, allowing but one entry, was established for that purpose, but in my opinion the danger was not so imminent as to call for such a rigorous regulation. That in many cases it works great injustice to *bona fide* settlers, cannot, I think, be denied. This fact has a forcible illustration in the case under consideration. Killin selected this tract because he supposed there were certain springs of water upon it that he desired to use, and which, if secured, would make the land valuable and fit for cultivation; but after he had made his entry and erected improvements on the land, he discovered that the springs and his own improvements were on another tract, and that another per-

son had acquired a pre-emption right to this other tract. The land was worthless to him, and he abandoned it to the Government. He appears to have been a *bona fide* settler from the first, and if he had not made a mistake with reference to the location of the springs, would probably have been to-day a peaceful settler, improving the land he had entered. The tract he now asks to enter is unappropriated Government land, to which there are no adverse claims. If allowed to enter it, in all probability, at the expiration of five years the Government will have a good citizen improving the land, the claimant will have acquired a home, and the paramount object of the law have been attained. The second section of the act of 1862, provides that every applicant under the Homestead law shall before entry make affidavit that he is the head of a family, or is twenty-one or more years of age, or has performed service in the army or navy of the United States; that he has never borne arms against the United States, or given aid and comfort to its enemies; *that the application is made for his own exclusive use and benefit, and that the entry is made for the purpose of actual settlement and cultivation, and not directly or indirectly for the use or benefit of any other person or persons.* To this is added under the instructions of the General Land Office a clause of affirmation that the applicant has "*not heretofore had the benefit*" of the act.

Section 7 enacts that the punishments provided by the act of March 3d, 1857, for certain crimes against the United States, shall extend to the offence of taking falsely any of the affidavits, oaths, or affirmations required or authorized by the act of 1862.

These provisions of law were framed for the purpose of preventing the same frauds at which this rule of the General Land-Office is aimed. No one can take this oath having the intention to sell his claim, without making himself liable to the pains and penalties of perjury. The sixth section properly enforced would obviate the necessity, if any exists, for establishing such a rigorous rule as the one under consideration. If it should at any time be found that an applicant under the Homestead Law had abandoned a prior entry for a consideration, or with the intent that such abandonment should inure to the benefit of any other person or persons, I think his application should be promptly rejected. This would be only to exercise a power inherently vested in the Government to protect its own interests, and would, I think, prevent fraud, while obviating the necessity of working injustice in a case like the one under consideration.

The rule was not framed in obedience to a positive requirement of law, but is one of expediency. In my opinion the Government can be fully protected under a modification of it, so as to allow second entries to be made, unless it appears that a prior one has been cancelled in fraud of the requirements or spirit of the act.

I recommend that the decision of the Commissioner be reversed, and that Killin be allowed to enter the tract in controversy.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

[NOTE.—The Secretary refused to concur in this opinion, and the former ruling of the Department is still in force.—ED.]

No. 292.

(D) FINAL PROOF.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Dec. 20, 1873.

GENTLEMEN:—In a number of cases, persons who have initiated titles to the public lands under the Homestead Law have allowed the limitation provided by the statute to expire without making the final proof of settlement and cultivation required by that act.

Therefore, in all such cases as now exist in your district, or may hereafter arise, you will notify the parties of their non-compliance with the law, and that thirty days from date of service of notice will be allowed to each of them within which to show cause why their claims shall not be declared forfeited and their entries canceled. At the expiration of that time you will report the reasons given, or, in case of failure, report that fact, so that in either event proper action may be had by this Office. But you will in no case allow the lands embraced in such claims to be re-entered until you shall have received from this Office a formal notice that the original entries have been *positively* cancelled.

I append a form of notice which you will be pleased to adopt.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

REGISTERS AND RECEIVERS, *United States Land Offices.*

FORM OF NOTICE.

A ——— B ———, (*Place of residence, or, that being unknown, address to the Post Office nearest to the land.*)

SIR:—You are hereby notified that the Homestead Law requires final proof of settlement and cultivation to be made within two years after the expiration of five years from date of entry, and that in case of your entry No.—, for —, dated —, the time fixed by the statute has expired without the requisite proof being filed by you. You will, therefore, within thirty days from date of service of this notice, show cause before us why your claim shall not be declared forfeited and your entry canceled for non-compliance with the requirements of the law, so that the case may be reported to the Commissioner of the General Land-Office for the proper action.

(DATE.)

_____, *Register.*
_____, *Receiver.*

No. 293.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., September 9, 1874.

TO REGISTERS AND RECEIVERS.

GENTLEMEN:—Attention has been called to numerous cases where entries have been made under the Homestead Law, and full time required by law in which to make final proof has elapsed without such proof having been presented.

It is presumed that in many cases this neglect arises from ignorance of the law, and that parties who have in good faith resided upon and cultivated their homesteads suppose that they have fully complied with the statute, and that nothing further is required on their part.

To remedy this, and prevent the great hardships which might arise from neglect in this important feature of the law, you are hereby instructed to examine your abstracts of homestead entries, and in every case where the term of five years from the date of entry has expired, you will send to the proper party a copy of the accompanying notice, filling in the description, etc. It is important that this should be done at an early day.

You will, hereafter, at least once a month, examine your abstracts, and give the same notice in case of the expiration within the preceding month of the term referred to.

Care should be taken to learn the Post Office addresses of parties affected by these instructions, and it would be well that in future applications under the Homestead Law the address of the applicant be taken.

It is to be understood that this does not supersede the Circular of December 20, 1873, but is intended to prevent cases for which that circular was issued from arising.

Respectfully,

S. S. BURDETT, *Commissioner.*

No. 294.

JOHN DILLON.

John Dillon made homestead entry and died, leaving a widow and children.

His widow asked to commute and have the patent issued to her.

D. H. Dillon asked that the patent should issue to the children.

Held—That it should issue to the widow.

Held, also—That any person should be allowed to commute who is, at the time the application to commute is made, the person entitled at the proper time, to prove up the claim, providing such claim, so far as it has progressed, is valid.

DEPARTMENT OF JUSTICE, OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, Oct. 31, 1871.

SIR:—I have examined the appeal of D. H. Dillon from the decision of the Commissioner of the General Land-Office, relative to the original homestead entry of John Dillon of S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ S. E. $\frac{1}{4}$ Sec. 8, T. 9, N. R. 7 E. R. & R. 855, from Nebraska City District.

John Dillon, shortly after he had entered the tract, died, leaving a widow and several children. His widow, Ellinor J. Dillon, made application to commute her late husband's entry to a cash entry under the 8th section of the Homestead Act, which was allowed July 21st, 1870. The heirs of John Dillon now ask that the patent be issued to them.

The Commissioner decided that during the life of a widow of a deceased homestead claimant, a patent could not issue to the heirs.

I agree with the Commissioner in his construction of the law, and with his application of it to this case.

The second section of the Homestead Act provides that no patent shall be issued until after five years from the entry, and then on proof of certain facts by "the person making such entry, or if he be dead, his widow, or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death."

Under this proviso four and only four classes of persons, can, in my opinion, make the final proof required.

1. The person who made the entry.

STANFORD LAW LIBRARY

No. 292.

(D) FINAL PROOF.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Dec. 20, 1873.

GENTLEMEN:—In a number of cases, persons who have initiated titles to the public lands under the Homestead Law have allowed the limitation provided by the statute to expire without making the final proof of settlement and cultivation required by that act.

Therefore, in all such cases as now exist in your district, or may hereafter arise, you will notify the parties of their non-compliance with the law, and that thirty days from date of service of notice will be allowed to each of them within which to show cause why their claims shall not be declared forfeited and their entries canceled. At the expiration of that time you will report the reasons given, or, in case of failure, report that fact, so that in either event proper action may be had by this Office. But you will in no case allow the lands embraced in such claims to be re-entered until you shall have received from this Office a formal notice that the original entries have been *positively cancelled*.

I append a form of notice which you will be pleased to adopt.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

REGISTERS AND RECEIVERS, *United States Land Offices*.

FORM OF NOTICE.

A ——— B ———, (*Place of residence, or, that being unknown, address to the Post Office nearest to the land.*)

SIR:—You are hereby notified that the Homestead Law requires final proof of settlement and cultivation to be made within two years after the expiration of five years from date of entry, and that in case of your entry No. —, for —, dated —, the time fixed by the statute has expired without the requisite proof being filed by you. You will, therefore, within thirty days from date of service of this notice, show cause before us why your claim shall not be declared forfeited and your entry canceled for non-compliance with the requirements of the law, so that the case may be reported to the Commissioner of the General Land-Office for the proper action.

(DATE.)

_____, *Register*.
_____, *Receiver*.

No. 293.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., September 9, 1874.

TO REGISTERS AND RECEIVERS.

GENTLEMEN:—Attention has been called to numerous cases where entries have been made under the Homestead Law, and full time required by law in which to make final proof has elapsed without such proof having been presented.

It is presumed that in many cases this neglect arises from ignorance of the law, and that parties who have in good faith resided upon and cultivated their homesteads suppose that they have fully complied with the statute, and that nothing further is required on their part.

To remedy this, and prevent the great hardships which might arise from neglect in this important feature of the law, you are hereby instructed to examine your abstracts of homestead entries, and in every case where the term of five years from the date of entry has expired, you will send to the proper party a copy of the accompanying notice, filling in the description, etc. It is important that this should be done at an early day.

You will, hereafter, at least once a month, examine your abstracts, and give the same notice in case of the expiration within the preceding month of the term referred to.

Care should be taken to learn the Post Office addresses of parties affected by these instructions, and it would be well that in future applications under the Homestead Law the address of the applicant be taken.

It is to be understood that this does not supersede the Circular of December 20, 1873, but is intended to prevent cases for which that circular was issued from arising.

Respectfully,

S. S. BURDETT, *Commissioner*.

No. 294.

JOHN DILLON.

John Dillon made homestead entry and died, leaving a widow and children.

His widow asked to commute and have the patent issued to her.

D. H. Dillon asked that the patent should issue to the children.

Held—That it should issue to the widow.

Held, also—That any person should be allowed to commute who is, at the time the application to commute is made, the person entitled at the proper time, to prove up the claim, providing such claim, so far as it has progressed, is valid.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, Oct. 31, 1871.

SIR:—I have examined the appeal of D. H. Dillon from the decision of the Commissioner of the General Land-Office, relative to the original homestead entry of John Dillon of S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ and W. $\frac{1}{2}$ S. E. $\frac{1}{4}$ Sec. 8, T. 9, N. R. 7 E. R. & R. 855, from Nebraska City District.

John Dillon, shortly after he had entered the tract, died, leaving a widow and several children. His widow, Ellinor J. Dillon, made application to commute her late husband's entry to a cash entry under the 8th section of the Homestead Act, which was allowed July 21st, 1870. The heirs of John Dillon now ask that the patent be issued to them.

The Commissioner decided that during the life of a widow of a deceased homestead claimant, a patent could not issue to the heirs.

I agree with the Commissioner in his construction of the law, and with his application of it to this case.

The second section of the Homestead Act provides that no patent shall be issued until after five years from the entry, and then on proof of certain facts by "the person making such entry, or if he be dead, his widow, or in case of her death, his heirs or devisee; or in case of a widow making such entry, her heirs or devisee, in case of her death."

Under this proviso four and only four classes of persons, can, in my opinion, make the final proof required.

1. The person who made the entry.

2. In case of the death of the person making the entry, his widow.
3. In case of the death of the person making the entry, and the widow, then the heirs or devisee of such person.
4. In case the person making the original entry was a widow, and she be dead, then her heirs or devisee.

Neither of these classes include the heirs of the person who made the original entry, while the widow is yet living.

In my opinion Congress intended to give the widow, if living, the benefit of the entry made by the deceased husband. It did not intend to give the heirs or devisee the right to perfect the entry so long as the widow lived.

A similar view of the law to the one I have expressed was taken by the Department in case of heirs of Patrick Gleason v. M. Gleason, July 18th, 1870. Any person should be allowed to commute under the 8th section from homestead to cash entry, who is at the time the application to commute is made, the person entitled at the proper time to prove up the claim, providing such claim, so far as it has progressed, is valid.

Ellinor J. Dillon was the person so entitled on the day she made application to commute. The patent, therefore, upon her full compliance with all the requirements of law, should be issued to her.

I recommend that the decision of the Commissioner be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, November 3, 1871.

No. 295.

A. F. HUBBELL.

1. A soldier who has made an entry under the homestead laws need not credit his term of military service on the five years' residence.
 2. In case of death of homestead settler prior to expiration of the five years, his heirs or devisee may commute or continue cultivation and settlement.
 3. If death occurred after the expiration of the five years the heirs or devisee may at once make proof.
- In the second and third cases, patent would issue in the name of "the heirs" of deceased, or in the name of his devisee.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Sept. 25, 1874.

MR. A. F. HUBBELL, *Fonda, Iowa.*

SIR:—In reply to your letter of the 22d of July last, I have to say, first, a soldier who has made an entry under the homestead laws is not required to avail himself of the privileges of the act of June 8, 1872, as regards crediting his term of military service in the United States army during the late civil war as a part of his five years' residence and cultivation required by act of May 20, 1862. The matter of availing himself of such privilege is optional with him.

Second. In case an unmarried homestead settler dies prior to expiration of five years from date of entry, his heirs or devisee may commute the same under the 8th section, act of May 20, 1862, or may continue the settlement and cultivation of deceased and make proof at the expiration of said five years.

Third. In case such settler dies after *completing* five years' settlement and before making proof his legal heirs or devisee may *at once* make proof.

In the second and third of the above stated cases, patent would issue in the name of "the heirs" of deceased, or in the name of his devisee.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 296.

FREDERICK A. HASKALL.

The brothers of a deceased settler, in case there are no others heirs, will be allowed to make final proof, and the final papers will be made out in the name of the deceased settler.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 4, 1874.

REGISTER AND RECEIVER, *Lincoln, Nebraska*.

GENTLEMEN :—I am in receipt of your letter of June 23 last, enclosing the affidavit and other papers of Jason F. Haskall, applying to be allowed to make final proof on his deceased brother's homestead, No 12,119, on the S. W. $\frac{1}{4}$ of Sec. 14-11-8 W., made by Frederick A. Haskall, at your office, November 9, 1872. In reply I have to state that, in consideration of the fact that Jason F. Haskall and brother are the only living heirs and next of kin of Frederick A. Haskall, deceased, and it appearing from the evidence presented that the deceased resided upon the land embraced in his homestead entry for one year prior to his death, which, added to his terms of military service in the United States army during the war of the rebellion, as shown by certified copies of his certificates of discharge attached to the affidavit referred to, make the five years required by the act of May 20, 1862, you are hereby authorized to allow Jason F. Haskall to make final proof on said homestead on payment of the proper commissions; and you will issue the papers in the case in the name of Frederick A. Haskall, and forward the same to this Office with your current returns, referring to this letter by "C" and date. The papers forwarded in connection with this case are herewith returned.

Very respectfully,

S. S. BURDETT, *Commissioner*.

[Final papers will issue in name of "the heirs." See No. 295.]

No. 297.

GEO. BATES.

Homesteads may be taxed where the right to the patent is complete.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Dec. 15, 1874.

MR. GEORGE BATES, *Sullivan, Franklin County, Missouri*.

SIR :—In reply to your letter of the 16th ultimo, relative to the taxation of lands embraced in homestead entries prior to the issue of patents therefor, I have to refer you to section 4 of the homestead act of May 20, 1862, as found on page 11 of circular of Aug. 30, 1872, herewith enclosed.

The Supreme Court of the United States, in a recent case, has thus stated the doctrine held upon the general subject:

"While we recognize the doctrine heretofore laid down by this court, that lands sold by the United States may be taxed before they have parted with the legal title by issuing a patent, it is to be understood as applicable to cases where the *right* to the patent is complete, and the equitable title is fully vested in the party without anything more to be paid or any act to be done going to the foundation of the right."

Very respectfully,

S. S. BURDETT, *Commissioner.*

(E) ABANDONMENT.

No. 298.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

June 25, 1869.

GENTLEMEN:—In order to secure a regular system and facilitate the business of the Department, you are hereby instructed to observe the following regulations respecting all cases of abandoned and relinquished homesteads:

1st. A settler desiring to relinquish to the United States his homestead claim, must surrender his duplicate receipt, his relinquishment being indorsed thereon. If, however, he has lost his duplicate receipt, that fact must be stated in his relinquishment, to be signed by the settler, acknowledged before the register or receiver, or other officer competent to administer oaths, whose official character must be certified under seal, and attested by two witnesses.

Numerous relinquishments of homestead entries have been reported in which it is alleged that *prior* to such entries there existed actual settlement, by persons other than the homestead party, upon the tracts embraced in such entries. It has, in this connection, been represented that such relinquishments were made to avoid vexatious and expensive contests, with a disclaimer of any intention to appropriate the improvements of others.

In dealing with such cases you will be guided by the following instructions:

You will require the affidavit of the homestead party to be substantiated by disinterested testimony showing—

That the tract is in the actual adverse possession of the party that may be named in the affidavit, or that he has valuable improvements thereon; setting forth the nature and extent of such improvements. Also, that the adverse interest is a substantial one, and accrued prior to the date of the homestead entry.

The evidence may be taken before you, or before some person authorized to administer oaths. In case such officer has no official seal, the certificate of the clerk of the court, under seal, must be appended, showing his authority.

2d. When a homestead entry is contested and application is made for cancellation, the party so applying must file an affidavit setting forth the facts on which his allegations are grounded, describing the tract and giving the name of the settler. You will then set apart a

day for a hearing, giving all the parties in interest notice of the time and place of trial.

On the day of hearing you will distinctly show at the caption of the papers in the proceedings the name of the settler, description of the tract, number and date of entry. You will then proceed with the examination of the witnesses. Each deposition must be signed by the witness and acknowledged before either the register or receiver; and at the conclusion of the trial you will briefly review the testimony, and thereafter will transmit to this office all the papers, with your joint decision thereon annexed, for final determination.

3d. The notice to a settler that his claim is contested must be served by a disinterested party, and a copy must be filed, with an affidavit that the notice has been served upon the homestead party, or brought home to him so as to be a legal notice; such copy of notice and affidavit to accompany the papers.

The expenses incident to such contest must be defrayed by the contestant.

4th. Applications for the cancellation of entries for the reason that the settler is dead, must be dealt with as per instructions in 2d paragraph of this circular, taking care that the settler's death is fully established.

5th. You will not permit another entry of the land to be made, whether the tract has been voluntarily relinquished, or under consideration on the ground of non-compliance with the homestead law, until you have received notice from this office of the cancellation of the entry covering the same.

6th. The land covered by canceled homestead entries having been thereby withdrawn from market, you will embrace it in a docket, which you will keep, of tracts in that condition; and when a sufficient number have accumulated to justify the expense of advertising, you will report them to this office, specifying such tracts as have heretofore been offered, and also such as have not; and, until restored to market by advertisement under instructions, they will only be subject to entry under the pre-emption or homestead laws, except where the same, upon such cancellations being made, may fall within railroad limits. In such cases the odd sections must be withheld from further entry, and the even ones treated at their proper ratability.

7th. The evidence of two witnesses is required to establish the facts of abandonment.

8th. There is another matter to which your attention is called in connection with Homestead operations. In the amendatory act of 21st March, 1864, it is declared that in case any person desirous of availing himself of the benefits of the homestead act of 20th May, 1862, but who, by reason of actual service in the army or navy of the United States, is unable to do the personal preliminary acts at the district land office, which said act of 20th May, 1862, requires, and "*whose family, or some member thereof, is residing on the land which he desires to enter, and upon which a bona fide improvement and settlement have been made,*" it shall and may be lawful for such person to make the affidavit required before the officer commanding, &c.

Under color of this law it appears that homestead applications have been allowed for soldiers and sailors, and entries reported to this office, in nine-tenths of which the affidavits fail to state the pre-existing settlement, as distinctly required by the statute and quoted in the foregoing.

I have, therefore, particularly to call your attention to that requirement and to request that if, upon examination, the affidavits presented by agents fail to aver this fact, you will reject the application and affidavit, stating to the party's representative the reason therefor, and reporting the particulars of such rejection to this office.

All cases of the above character must be reported to this office with special communications. You are requested to acknowledge the receipt of this circular, and enjoined *strictly* to observe its requirements.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner*.

REGISTER AND RECEIVER.

No. 299.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

April 26, 1870.

GENTLEMEN:—Frequent inquiries have been made as to the rights of parties who, having filed evidence of abandonment of Homestead Entries, have at the same time made applications and deposited the necessary fees and commissions for Homestead Entries of the tracts in their own names, pending the report of the cancellation of the abandoned entries from the General Land-Office.

For your information and guidance, it is stated that a party obtains no rights to enter a tract of land by reason of being the informant of an abandonment of the same by a Homestead settler, nor does the filing of his application and money with the district officers, *pending the action of this office* on the case, give him any preference rights.

The person must, if he desires the land, by proper diligence ascertain when notice of cancellation is received, and *then* make formal application for the tract, the land always being open to the *first legal applicant* after notice of cancellation is received, unless otherwise withdrawn from entry for any purpose.

The action of the land officers in receiving applications and money before being notified of the decision of this office is irregular, and they are requested in future to decline receiving the same.

Be pleased to acknowledge receipt of this circular without delay.

Very respectfully,

JOS. S. WILSON, *Commissioner*.

TO REGISTERS AND RECEIVERS, *U. S. Land Offices*.

No. 300.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

November 15, 1873.

GENTLEMEN:—It has become the practice of interested parties desiring to procure the cancellation of entries of public land, allowed under the homestead laws, to send directly to this Office the duplicate receipts issued for the entries in question, with the written relinquishment of the parties to whom issued indorsed thereon, as evidence of abandonment.

The practice referred to, which is contrary to rule, is found to retard the business of this Office, and may give rise to irregularities in the subsequent disposal of the land.

You are therefore informed that in all cases hereafter arising, the relinquished receipts, like any other evidence of abandonment, must be regularly reported by the Register and Receiver of the proper district land office, with their opinion thereon, before final action by this Office.

In order to facilitate business, it is directed that the duplicate receipts when relinquished be folded in proper form for filing, the number thereof, with the name of the party to whom issued, being endorsed on each, and transmitted at regular periods, with your monthly returns, but in a separate package, accompanied by a separate letter of transmittal.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER.

No. 301.

W. T. S. MAY.

The testimony in homestead contests may be taken before any officer authorized to administer oaths, upon proper notice to the defendant.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Dec. 15, 1874.

W. T. S. MAY, Esq., *Cawker City, Kansas*.

SIR:—In reply to your letter of the 24th ult., relative to taking testimony in contested homestead cases, I have to state that after the initiation of a contest against a homestead entry by making the required affidavit before the district land officers, the testimony in support of the allegations of the contestant may be taken before any officer authorized by law to administer oaths and using a seal, upon giving proper notice thereof to the defendant, which, in case he can be found, should be personal service, and if not, by newspaper publication. The evidence should then be presented to the district land officers for their consideration and action.

* * * * *

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 302.

JONES v. ROBERTS.

The decision of the Commissioner in a contest from which no appeal was taken becomes final between the parties as to all matters arising before the trial.

The plaintiff has a right to contest an entry in a new proceeding for abandonment or change of residence subsequent to the date of the former trials.

No other questions than those of abandonment or change of residence can in any case be considered.

A contestant who has been twice defeated should be held to a strict statement of his claim.

A statement that the homestead party (who is a widow) does not occupy the land claimed as a homestead, but that the same is occupied and used by her son (who is a married man), and who has the sole and undisputed control of the same, is held insufficient.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., December 9, 1874.

SIR:—I have examined the case of Samuel Jones v. Sarah Roberts, contest under the 5th section of the Homestead Law, involving title to S. $\frac{1}{4}$ S. E. $\frac{1}{4}$ Section 3, T. 3. N., R. 22 W., Dardanelle, Arkansas, upon appeal from your decision of July 23, 1874.

The record shows that defendant entered this land as a homestead November 16, 1870; that plaintiff commenced a contest under the 5th section of the act August 12, 1873; that the contest was dismissed by your Office October 8, 1873, on the ground that neither abandonment nor change of residence was shown; that no appeal was taken from this decision; that plaintiff commenced another contest before the land officers January 21, 1874; that your office dismissed this second contest June 17, 1874, on the ground that it did not show any cause whatever for cancellation, arising subsequently to the prior hearing before the local officers, and no motion for re-hearing had been made to your office; that the second decision of your office was not appealed from; that July 8, 1874, plaintiff again applied to the local officers to be allowed to contest the entry; that this application was referred to your office; that July 23, 1874, you declined to make any further order in the case, and that from this decision plaintiff appealed to the Department. No appeal having been taken from your first decision dismissing the contest, that decision became final between the parties as to all matters arising before the trial. The second contest being dismissed and no appeal being taken, the decision therein is also conclusive of the rights of the parties to the date of the second trial. The law, however, gives to the plaintiff the right to contest the entry in a new proceeding for abandonment or change of residence subsequent to the date of the second trial. No other questions than those of abandonment or change of residence can in any case be considered in a proceeding under the 5th section, and in this case the inquiry would be strictly confined to events happening since the second trial.

The application to contest, if it had contained the charge of abandonment or change of residence subsequent to the said second trial, would have been entitled to consideration under the rules of law above noticed. The application now before me, however, is fatally defective in substance. It does not allege sufficient facts, admitting them to be true, to work a forfeiture of the homestead. It is bad on general demurrer. It simply alleges that "the said Sarah A. Roberts does not occupy said tract of land, to wit: S. $\frac{1}{4}$ S. E. $\frac{1}{4}$ 3, as a homestead, but that the same is occupied and used by one Henry Roberts as a homestead; that said Henry Roberts has the sole use and undisputed control of said tract of land." It is dated July 8, 1874.

It may be true that Mrs. Roberts did not on that day occupy the land, and that Henry Roberts did, and yet she may not have abandoned it or changed her residence. A contestant who has been twice defeated should certainly be held to a strict statement of his claim when he asserts it for the third time. I think the application is insufficient, and I hereby dismiss the same. Your decision is modified accordingly.

Very respectfully,

C. DELANO, *Secretary.*

Commissioner General Land Office.

No. 303.

GEORGE HORNICK.

Upon proper evidence of a homestead claimant's insanity being presented, his homestead entry will not be contested on the ground of abandonment. A guardian in such cases should be appointed by the proper court, who will, on presenting acceptable final proof, receive patent in the name of the insane claimant.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 11, 1874.

MR. ROBERT A. POOL, *Randolph, Dakota co., Nebraska.*

SIR:—I am in receipt of your letter of the 13th ult. relative to homestead entry No. 874, on the N. W. $\frac{1}{4}$ of sec. 28, Tp. 27 north, of range 6 east, made by George Hornick at Dakota, Neb., May 17, 1869. In reply I have to state that if the proper evidence of the insanity of Mr. Hornick, and the fact that he is now confined in an insane asylum, is forwarded to this office, no application to contest his entry on the ground of abandonment will be allowed.

The proper course for the friends of Mr. Hornick to pursue, under the circumstances, is to make application to the court having jurisdiction in such cases for the appointment of a guardian for him, who would have charge of his effects. Should the mother referred to by you be appointed guardian, she would be allowed, at the expiration of five years from date of entry, should Mr. Hornick be incapable of acting for himself, to make final proof as guardian, in behalf of her son, and if the same be accepted by this Office the patent will issue in the name of George Hornick.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 304.

BROWNELL'S HEIRS v. BROCKWAY.

A woman who had a husband living lived and cohabited with Isaac Brownell and was treated by him as his wife. He made homestead entry and died. After his death she surreptitiously obtained the certificate of entry, sold out to Brockway, who knew the facts, and endorsed on certificate her consent as widow to cancellation of homestead entry. Brockway procured the cancellation, and then entered the land as a homestead.

Afterwards the heirs of Isaac Brownell procured a hearing, and the Commissioner reinstated the first entry. His decision was affirmed by acting Secretary Cowen, November 14, 1872.

No. 305.

BEHME v. DONKEN.

The Commissioner directed cancellation of the entry of Donken; and Behme, before time for appeal had expired, made homestead entry. Afterwards, upon a proper showing being made by Donken, the Commissioner directed a re-hearing, and upon such re-hearing Donken was able to show that he had not abandoned the premises.

Held—That Behme made his entry subject to the final determination of the contest; and such determination being in favor of Donken, the entry of Behme should be cancelled and that of Donken reinstated.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 23 October, 1872.

SIR:—I have considered the case of Henry Behme v. Jacobus C. Donken, relating to the homestead entry of said Donken, on the N. W. $\frac{1}{4}$ of Sect. 24, T. 36, R. 29, at St. Cloud, Minnesota, and coming up on appeal from your decision adverse to Donken.

Donken made his entry August 19th, 1869. Behme, on the 29th of October, 1870, made a charge against Donken of abandonment. On the hearing Donken did not appear or produce any evidence, and such proceedings were had that you, on the 21st of April, 1871, ordered a cancellation of said entry. On the 10th of May, 1871, and before the time for appeal by Donken had expired, Behme made homestead entry of these premises.

You afterwards, upon a proper showing being made by Donken, ordered a re-hearing of his case, and upon such re-hearing, he was able to show, and did show, and you so found, that he had not abandoned his homestead; but notwithstanding such finding, you, in view of the fact that Behme had made an entry before the order of re-hearing, cancelled the entry of Donken, and awarded the land to Behme.

I agree with you as to the facts of the case, but I cannot agree with you in the conclusion that you have drawn from such facts. I think Behme made his filing subject to be defeated by the proceeding then pending, in the event it should finally be found that Donken had not, in fact, abandoned his homestead. He made his entry before the proceeding was finally terminated, and took the risk of the final decision being against him. He was himself a party, and was bound to take notice of the legal termination of the case.

I reverse your decision, and direct that the entry of Donken be re-instated, and that of Behme cancelled.

The papers are herewith returned.

Very respectfully, your obedient servant,

B. R. COWEN, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land Office.*

No. 306.

DUNGAN v. GRIFFEN'S HEIRS.

The homestead law only allows one claim to any individual, but it does not prevent such person from inheriting the inchoate right of another, or receiving the same in a representative capacity.
What constitutes abandonment.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL.

Washington, D. C., April 17, 1872.

SIR:—I have examined the case of John B. Dungan v. Heirs of Andrew Griffen, on appeal from the decision of the Commissioner of the General Land-Office of February 8th, 1872, involving the right to S. $\frac{1}{2}$ S. E. $\frac{1}{4}$ Sec. 21, and W. $\frac{1}{2}$ N. E. $\frac{1}{4}$ Sec. 23, T. 7 N., R. 3, E., Concordia, Kansas. * * * * *

The Commissioner ordered the cancellation of the entry, holding that all the heirs of the deceased capable of continuing the cultivation and settlement had homestead claims of their own, and that the tract had been in an abandoned condition for more than six months.

I do not agree with the Commissioner on either of these points. Admitting that the deceased claimant was the illegitimate son of Frank Griffen, he was still capable, under the facts stated above, of inheriting from or transmitting an estate through the father under the statute laws of Kansas, which laws are to be sought to ascertain what persons are heirs in the meaning of the homestead law in cases arising within said State. Under these, the brothers and sisters of the deceased claimant are his heirs, and are, therefore, capable, under the homestead act, of following up the settlement of their ancestor, unless disqualified by some special provision of law. No such special disqualification exists with reference to the heirs, the provision of the act prohibiting a claimant from acquiring more than one homestead under it, being construed to mean that such claimant shall acquire but one homestead *in his own right*, and has no application to a case where one is a personal, and the other a representative claim. Aside from the adult heirs who have claims of their own, and the adult heir in Indiana, there are several minor heirs.

There is nothing in the evidence, so far as I have been able to discover, to show that they are incapable of continuing the cultivation. The facts above recited, on the contrary, show that they did attempt to continue it, aided and assisted by their brother and brother-in-law, that they have never since the death of their brother been away from the tract for the full period of six months, but that they have in good faith endeavored as best they could under the circumstances, to continue the right thrown upon them by the death of the claimant.

It is shown that a few days before this contest was commenced on the complaint of Dungan, the house on the tract in controversy was moved off and placed upon the claim of Russill K. Griffen; but I am satisfied that this was not done with intent to abandon the claim, but under the impression that the building would thus be saved from being "jumped," and I am also satisfied that this impression was the result of conversations on the subject by the widow and children with one Anthony, the attorney for the contestant.

Russill K. Griffen testifies that he went upon the tract in March, 1870, with the children, for their benefit; that they (the children) left it in March, because they were poor, and had to work for their living away from the land; that the reason they left it in the following August was because Anthony told them that they could not hold the claim, that a man was going to jump it, that they would lose all the improvements and would get nothing for them, that Dungan wished to buy the claim, would pay the widow \$100 for it, and would go to the land-office and beat this other man who was intending to jump it; that they left the tract, and went in their mother's house. His evidence is fully corroborated by that of Johnson and the widow. The latter also swears that the house was moved off to save it, as she supposed, from being "jumped;" that she told Anthony she did not want to sell the claim, but rather than lose it entirely, she would sell it to Dungan for \$100.

It should be borne in mind that these people were poor, uneducated negroes, who had recently been released from a condition of slavery in which they were continually subjected to the dictation and command of their masters, and in all probability were easily influenced by what was told them as to their rights under the law. Under these circumstances, I think they have complied with the law in pursuit of their rights, in a manner greatly to their credit.

I am satisfied that at no time since the death of the ancestor have they intended to abandon the land ; they have never been away from it six months ; their first departure was not inconsistent with entire good faith as homestead claimants, and their last departure was the result of the deception practiced upon them by the contestant, and should not in my opinion be allowed to prejudice their rights.

Clear and positive proof of change of residence or abandonment for six months should be required in a contest under this section with parties like these ignorant claimants, and the *onus* should of course be upon the contestant. Such clear and positive proof is not, in my opinion, shown in the record in this case. On the contrary I think it is shown with reasonable certainty that there has not been any such change of residence or abandonment.

I therefore recommend that the decision of the Commissioner cancelling the entry be reversed, and that the local officer be instructed to notify the claimants (the said minor children), that upon fully complying with the requirements of law relative to residence and cultivation, they will be entitled to a patent on the land at the expiration of five years from the date of their ancestor's entry, or within two years thereafter, upon due proof of such residence and cultivation, and payment of the proper fees.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Acting Secretary, April 18, 1871.

No. 307.

REDFIELD v. MCKAY.

Held—That a homestead claimant who had contracted to convey 20 acres of the land to another party was not within the law and should not be allowed to hold the land. His entry was cancelled.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, July 12, 1871.

SIR:—I have considered the case of Warren Redfield v. Archibald McKay.

Land in controversy, N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and N. W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 23, N. R. 12 W., LaCrosse, Wis.

McKay, on the 22d of June, 1868, entered the land as a homestead.

Redfield, May 18, 1870, charged him with having alienated part of his land, and asked that the entry be cancelled. Hearing was had June 8, 1870.

The local officers did not consider the charge sustained. Commissioner overruled their decision and ordered the cancellation of the entry. McKay has appealed :

This land was formerly held as a homestead by one D. F. Odell, who owned in fee simple eighty acres of adjoining land. McKay, in company with one Samuel McKiben, purchased from Odell the land he held in fee simple and in connection with it the homestead claim, each of them paying him \$1750. The total number of acres then purchased was two hundred, one hundred and twenty in the homestead and eighty in the fee simple land. In order to make an equal division it was, agreed

between McKay and McKiben that the latter should enter the homestead and convey twenty acres of it to McKiben.

Odell relinquished his claim to the Government, his entry was cancelled, and McKay then entered the land. Four days after his entry a contract was entered into by the two purchasers, under seal, in which McKay bound himself in the penal sum of five hundred dollars to make a deed to McKiben for twenty acres of the land. The contract was drawn up by one A. Rockwell, a Justice of the Peace, each party affixing his mark and seal. The contract was then left in the custody of Rockwell, for preservation, until it should be needed and called for by the parties.

McKay asked Rockwell whether the contract would affect his homestead right, and Rockwell replied that *he thought it would if it was known, not otherwise*. After the contest arose, McKiben executed a release to McKay of all his right, title and interest in the twenty acres.

Redfield is in possession of from half an acre to an acre and a half of the tract in controversy, by purchase from one Warren Durham, with a verbal agreement on the part of McKay that he should have a deed of it when he (McKay) obtained a patent from the Government.

The question that arises for decision is this: Are these facts sufficient evidence of fraud in the original entry to call for its cancellation?

The second section of the Homestead Law provides that before making an entry, the person applying shall make affidavit "that such application is made for his or her exclusive use and benefit, and not either directly or indirectly for the use or benefit of any person or persons whomsoever."

In the case under consideration, the entry was made and the above affidavit taken, under an express agreement that part of the land should go to the "use and benefit" of another person.

This verbal agreement was consummated four days after entry by the execution of an instrument under seal, binding the claimant in a penal sum to deed twenty acres of the land. This was done with full knowledge of its effect on the homestead claim, if discovered, as shown by the testimony of Rockwell, who drew up the contract.

The same section also provides that before a patent is issued to the claimant, at the end of five years he "shall make an affidavit that no part of said land has been alienated." The word "alienated" can here mean nothing else than any attempt to dispose of the homestead interest, or claim, contrary to the provision of the act.

It cannot mean *legal alienation*, for the interest that the claimant has is not a legal estate, and therefore not capable of disposition as such by regular conveyance. If the word alienation, as here used, has any effect at all, it must mean any attempted disposition of the homestead right. The claimant, in this case, executed an instrument of great solemnity, by which he attempted, contrary to the provision of the act, to dispose of all his interest in twenty acres of the homestead. He could not have done more without at once exposing his entry to attack by any one on the ground of a patent violation of the act.

He has within the meaning of the second section "alienated" part of his land; and he cannot, at the end of five years, make the affidavit required without committing the crime of perjury. Under these circumstances it would certainly be against public policy to allow him to hold the land for two years to the exclusion of all other persons.

I think fraud is shown on the part of McKay in entering the land

contrary to the provisions of the Homestead act, and that his entry should be cancelled.

I therefore recommend that the decision of the Commissioner be affirmed.

Very Respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by Acting Secretary Cowen, July 12, 1871.

No. 308.

SNYDER v. ABBOTT.

Held—That under a charge of abandonment, under the 5th Section of the Homestead act, proof that the claimant had alienated the land was inadmissible. Such proof is proper at the final hearing.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 14th August, 1872.

SIR:—I have considered the case of Jacob Snyder v. William N. Abbott, involving the question of the abandonment by the latter of his homestead entry made July 31, 1869, on the E. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 28, T. 9, R. 34 W., Sioux City, Iowa.

The evidence taken at the trial, while seriously impeaching Abbott's good faith, shows that he has a house, some cultivation and other improvements on the land, and that he has never been absent therefrom for so long a period as six months.

The charge of abandonment is not sustained, and the question of good faith can only be settled when he comes to make his final proof, as the law makes no provision for a summary cancellation of a homestead entry for any other cause than abandonment.

I affirm your decision in favor of Abbott, and return the papers in the case transmitted with your letter of the 3d. ultimo.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 309.

SEAY v. SHELLETO.

Held—That a sale of the premises for a consideration and possession given, was an abandonment, although the proceeding was commenced before the expiration of six months from the time of sale.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., December 10th, 1872.

SIR:—I have examined the case of W. H. Seay v. Wm. W. Shelletto, involving S. $\frac{1}{2}$, S. W. $\frac{1}{4}$, Sec. 21, and N. $\frac{1}{2}$, N. W. $\frac{1}{4}$, Sec. 28, T., 35 R., 25 W., Camden, Arkansas, on appeal from your decision of June 29th, 1872.

The case is one of contest under the 5th section of the Homestead act, the complainant, Seay, alleging that the defendant, Shelletto, "had wholly abandoned said tract, and has conveyed and sold the same and has changed his residence."

The evidence establishes two facts, either of which is conclusive of his alleged total abandonment of the tract claimed: first, a verbal sale of his right to one Wm. H. Miller, accompanied with delivery of possession and acceptance of a consideration; second, a mortgage of a portion of the premises claimed which mortgage still remains unsatisfied,

I therefore affirm your decision ordering the cancellation of his entry, and return herewith the papers transmitted with your letter of the 25th ultimo.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner of the General Land-Office.*

(F) SPECIAL RELIEF.

No. 310.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 9, 1874.

REGISTERS AND RECEIVERS.

GENTLEMEN:—I transmit herewith copy of an act entitled "An Act for the relief of certain settlers on the public lands in certain portions of the States of Minnesota and Iowa." [Part II., No. 115.]

It is the intention of section 1 of said act to grant to pre-emption and homestead settlers a leave of absence from their claims where their crops were destroyed or seriously injured by grasshoppers in 1873 and the ravages of these insects are again commenced in 1874.

Section 3 legalizes an enforced absence from a like destruction or injury to crops to such as may have settled in 1874.

Section 2 provides that during such period of absence no adverse right can attach, and that the term of absence shall be regarded as a part of the period required to perfect title under the homestead law, and a part of the time pre-emptors are allowed for proof and payment—that is to say, they are during such absence constructively present on their claims.

The act is not retroactive, and legalizes absence only between June 18, 1874, and May 1, 1875.

This right of absence is not available to any whose crops are not either destroyed or seriously injured, hence when a settler not actually entitled to the benefits of this act absents himself from his claim it will be construed as an abandonment, and adverse claims will be recognized.

Written notice of intended absence, signed by the party, should be filed with the Register and Receiver when he leaves his claim. This is a means of protection to the claimant, and is due those who otherwise might initiate invalid adverse claims.

At date of final proof by any party who has availed himself of the act, proof must be submitted, showing the period of absence, and its necessity. This proof should consist of such details as will enable you and this Office to judge whether the absence is justified by the law.

After a party shall have filed notice with you of intended absence under this act, no contest involving his rights to the land can be instituted prior to May 1, 1875.

If the party has made fraudulent absence, it will be a matter for investigation in the regular manner after said last-mentioned date.

All contests touching such claimants, commenced prior to June 18, 1874, may be proceeded with.

You will govern your action accordingly. Please acknowledge receipt.

Respectfully,
S. S. BURDETT, *Commissioner.*

No. 311.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 17, 1874.

To the Registers and Receivers of the U. S. Land Offices at Des Moines and Sioux City, Iowa; Worthington, New Ulm, Redwood Falls, and Litchfield, Minnesota.

GENTLEMEN:—In view of the great distress prevailing in certain counties of the States of Iowa and Minnesota, caused by the destruction of crops by grasshoppers—the existence of which is recognized by the Act of Congress approved June 18, 1874—and of representations made to this Office of the inability of the Homestead settlers within the devastated districts to bear the expense of the long journey required to be made by themselves and witnesses to the Local Land-Office for the purpose of making the final proof required by law; and to the end that such persons as are now entitled under the law to make such proof may be enabled to do so at the least possible expense to themselves, consistent with the due administration of the law by this Office, existing regulations are so far modified as that, from this date and *until May 1, 1875*, the final affidavit and proof in Homestead cases may be made at the Court House of the county within which the Homestead premises are situated, before the clerk of any court of record for such county authorized by law to use an official seal.

To entitle parties to the benefit of this mode of proof it is required that they post up conspicuously on the land embraced in the Homestead entry, and on the door of the Court House, and keep posted for not less than three weeks, a written or printed notice, to be signed by the Homestead settler, stating that he will, on a day to be named therein, appear before the clerk of the court, at the Court House, for the purpose of making final Homestead proof on the land, describing the same by subdivisions of section, township, and range.

The affidavit of the settler and the proof of his witnesses must show : *First*, The settlement and cultivation of the land, as is required by law in ordinary cases ; *Second*, That the notices herein specified were posted, and remained posted, in the manner and for the period of time required by these regulations ; and, *Third*, That in consequence of the ravages of grasshoppers the party is unable to defray the expense of a personal attendance at the District Land-Office. A certificate from the clerk of the court must accompany the said papers, and show that the settler and the witnesses produced by him are residents of the county, or in the neighborhood of the land, and are credible persons.

In cases where it is not practicable to prove the settlement and cultivation of the land and the posting of notices, as herein required, by the same witnesses, the fact of the posting and maintenance of the notices may be shown in a separate affidavit by other witnesses, whose credibility shall be certified in the manner hereinbefore specified by the clerk of the court.

After these papers shall have been properly attested under seal by the clerk, the same may be transmitted by mail or private hand, together with the necessary fee and commissions, to the Register and Receiver of the proper District Land Office. The fee and commissions so forwarded, however, will be at the risk of the party forwarding the same.

The foregoing privilege will be confined to Homestead settlers residing within the boundaries of the Sioux City Land District and the counties that are contiguous thereto, in Iowa; and the counties of Cottonwood, Nobles, Martin, Jackson, Watonwan, Murray, Rock, Lyon, Redwood, Brown, Chippewa, and Renville, and the counties contiguous thereto, in the State of Minnesota.

S. S. BURDETT, *Commissioner*.

SCHEDULE OF FEES AND COMMISSIONS IN HOMESTEAD CASES.

Acres.	Price per acre.	Commissions.		Fees.	Total Fees and commissions.
		Payable when entry is made.	Payable when certificate issues	Payable when entry is made.	
160	\$1 25	\$4 00	\$4 00	\$10 00	\$18 00
80	1 25	2 00	2 00	5 00	9 00
40	1 25	1 00	1 00	5 00	7 00
80	2 50	4 00	4 00	10 00	18 00
40	2 50	2 00	2 00	5 00	9 00

No. 312.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 5, 1875.

REGISTERS AND RECEIVERS.

GENTLEMEN:—I transmit herewith copy of an act entitled "An act for the relief of certain settlers on the public lands," approved December 28, 1874. [Part II., No. 130.]

This act provides that where the crops of homestead and pre-emption settlers were destroyed or seriously injured by grasshoppers in 1874, such settlers shall be allowed a leave of absence from their claims until July 1, 1875; that where such grasshoppers shall re-appear in 1875 to the like destruction of crops, such leave of absence shall continue until July 1, 1876; that during such absence no adverse rights shall attach, and that the term of absence shall be regarded as a part of the period required to perfect title under the homestead law, and a part of the time

pre-emptors are allowed for proof and payment—that is to say, they are during such absence constructively present on their claims.

This right of absence is not available to any whose crops were not either destroyed or seriously injured; hence when a settler not actually entitled to the benefits of this act absents himself from his claim it will be construed as an abandonment, and adverse claims will be recognized.

Written notice of intended absence, signed by the settler, should be filed with the register and receiver when he leaves his claim. This is a means of protection to the settler, and is due those who otherwise might initiate invalid adverse claims.

At date of final proof by any party who has availed himself of this act, proof must be submitted showing the period of absence and its necessity. The proof should consist of such details as will enable you and this Office to judge whether the absence is justified by the law.

After a party shall have filed notice with you of intended absence under this act, no contest involving his right to the land can be instituted prior to the expiration of the legal term of absence to which he is entitled.

If the party should be fraudulently absent, it will be a matter for investigation in the regular manner after the expiration of such leave of absence.

You will observe that pre-emptors whose crops have been destroyed or seriously injured as aforesaid are allowed an extension of one year after the expiration of said term of absence for proof and payment. This provision is regarded as applicable only to such as may find it necessary to avail themselves of the said leave of absence; and if the absence is found to be fraudulent, the extension of time does not apply, and adverse claims will be given effect.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 313.

JOHN RUSSELL.

The act of Dec. 28, 1874, applies only to actual settlers under the homestead and pre-emption laws, and not to those who simply filed a D. S. without settlement.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Feb. 15, 1875.

MR. ROBERT A. GRAY, *Raymond, Rice Co., Kansas.*

SIR:—In reply to your letter of the 25th ult., relative to the case of John Russell, who filed homestead declaration, act June 8, 1872, for land, and failed to make homestead entry thereof within the required time, I have to state that the act approved Dec. 28, 1874, entitled "An act for the relief of certain settlers on the public lands," (copy enclosed,) applies only to "homestead and pre-emption settlers on the public lands whose crops were destroyed or seriously injured by grasshoppers in the year 1874." It does not appear from your letter that Mr. Russell ever *settled* on the land, but that you were empowered by him to have 20 acres of the land *broken*. Mr. Russell's claim to make entry of the land by reason of grasshoppers causing his failure within the required time cannot be recognized, a valid adverse claim thereto having intervened, in the nature of a timber culture entry, as stated in your letter. Mr.

Russell's only remedy will be found on examination of Circular of May 17, 1873, herewith enclosed. (No. 327.)

Very respectfully,

S. S. BURDETT, *Commissioner.*

II. SOLDIERS' AND SAILORS' HOMESTEADS.

(A) ORIGINAL.

No. 314.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

June 13, 1872.

GENTLEMEN :—Attached is a copy of the amended law of Congress granting homesteads to soldiers and sailors, their widows and orphan children. (Revised Statutes, sections 2304 to 9.)

This law allows :

1st. Every soldier and officer of the Army, and every seaman, marine, and officer of the Navy, who served for not less than ninety days in the Army or Navy of the United States "during the recent rebellion," and who was honorably discharged, and has remained loyal to the Government, to enter, under the provisions of the homestead law, one hundred and sixty acres of the public land, including the double minimum lands.

2d. That the time of service, or the whole term of enlistment, when discharged on account of wounds or disability, shall be deducted from the time heretofore required to perfect title: *Provided, however,* That the person shall reside upon, improve, and cultivate his homestead for a period of at least one year after he shall commence his improvements. It is required that the period (whether one year or more) of actual residence, improvement, and cultivation that may be found necessary to perfect each case of entry under this act, shall follow immediately upon the date of entry.

3d. That any person entitled to the benefit of this act, and who has heretofore made a homestead entry of less than one hundred and sixty acres, may enter under this act an additional quantity of land contiguous to the first entry, which shall make in the aggregate one hundred and sixty acres.

4th. That the widow, if unmarried, or in case of her death or marriage, then the minor orphan children of a person who would be entitled to the benefits of this act, may enter lands under its provisions, with the additional privilege accorded, that if the person died during his term of enlistment, the widow, or minor children, shall have the benefit of the whole term of enlistment.

5th. That where a person may heretofore have made an entry under the homestead laws while in the United States military or naval service, or before entering such service, the time of service shall be equivalent to a residence for the same length of time upon the tract so entered: *Provided,* That the party shall show at least one year's continued residence upon, and improvement and cultivation of, the tract. The law also reinstates such entries as may have been cancelled because

of the party's absence from the land while in the military or naval service, provided the land has not been disposed of. And where it has been disposed of, the statute authorizes another entry and the application to the second entry of the proofs touching his residence and improvement on the first tract.

6th. That any person entitled to the benefit of this act may file his claim for a tract of land through an agent, and shall have six months thereafter within which to make his entry and commence his settlement and improvement upon the land.

The last section of the act authorizes the Commissioner of the General Land-Office "to make all needful rules and regulations to carry into effect the provisions" of the act.

Therefore, when application shall be made to enter a tract of land under the provisions of this act, you will permit—

1. *In case of original claimants*, immediate entry to be made; but if the party so elects, he may file a declaration to the effect that he claims a specified tract of land as his homestead, and that he takes it for actual settlement and cultivation. These statements you will enter upon your records and report in an abstract as homestead declarations, commencing the series with number one.

Thereafter, and at any time within six months from the date of said declaration, you will allow the principal to make, in the usual manner, a homestead entry of the tract. These entries you will report with your regular series of homesteads, using, however, the forms hereto attached. Should the party present his declaration through an agent, as authorized by the fifth section, said agent must produce a duly executed power of attorney from the principal desiring to make the entry, who will be bound by the selection his agent may make, the same as though made by himself. Failure on the part of a principal to make entry of the tract filed upon by himself, or agent, within six months from the date of said filing, will be regarded as an abandonment, and will entail a forfeiture of all right of the said principal to the benefits of this act.

2. *Claims of widows and orphan children.*—The initiation of a claim by declaration will be the same as in the first instance. When making the homestead entry, the widow must make affidavit of her widowhood and right to enter; and in case of minor orphan children, the duly appointed guardian must file certified copies of the power of guardianship when making the declaration, which must be transmitted with the abstract of such declaration. It is not *compulsory* in any case that a party when applying in person should first file a declaratory statement. That is a privilege accorded him, but he may at once make an entry of the land upon the proofs necessary to show his right under the law.

3. *Settlers whose entries have been canceled.*—The applicant must make oath that he had made an entry while in the military or naval service, or prior to such service, giving the date of entry, and describing the tract of land entered; that he went upon, or returned to the land within six months from the date of his discharge from the service, and that his entry was canceled by reason of his absence from the claim for more than six months while in the United States service. This affidavit you will transmit, with a report of the condition of your records, for the examination of this office, when, if found correct, and the land covered by the original entry is found to be undisposed of, the entry will be reinstated on the records, and the applicant allowed to

make proof that he had settled upon, improved, and cultivated the tract, which proof, if satisfactory, will entitle him to a patent. If the tract has been disposed of he will be allowed to select another homestead, and the proof of settlement and cultivation of the first tract may be used by him in proving his claim in the second entry. *You will not, however, allow any entry under this head except upon instructions from this office.*

5. *Applicants for additional land.*—Such persons will file their applications for the tract desired, which must be *contiguous to the original homestead*. The entire tract must not exceed one hundred and sixty acres, except in the nature of an immaterial excess, caused by the fractional character of some subdivisions of the public surveys, such as is now allowed in similar cases. The application must be accompanied by the prescribed evidence of the military or naval service of the applicant and of his right to the benefit of the law. An entry of additional land will take the current date.

A, B, C, D, are forms of declaration, application, affidavit, and receipt to be used under this law, and you will be careful to use them in all cases arising under it. In addition to these forms you will require, when entries are made in the future,

1st. From original applicants, certified copies of certificate of discharge, showing when the party enlisted and when he was discharged, or, if these cannot be procured, then satisfactory evidence on these points.

2d. In case of widows, evidence of military service of husband and affidavit of widowhood.

3d. In case of minor orphan children, in addition to evidence of military service, proof of death or marriage of the mother. Evidence of death may be the testimony of two witnesses or certificate of a physician duly attested. Evidence of marriage may be certified copy of marriage certificate, or of the record of same, or testimony of two witnesses to the marriage ceremony.

The register and receiver will be allowed to charge one dollar each for receiving and filing the initiatory declaration of the parties whenever they exercise the privilege of first filing such declaration, but you will take care to advise applicants that such declaration is not necessary where they first apply in person to make an actual homestead entry. This fee the receiver will account for in the usual manner, indicating the same therein as fees for "homestead declarations," which will be charged against the maximum of \$3,000 now allowed by law. In the States and Territories, for which 50 per centum additional is allowed by sixth section of the act of March 21, 1864, the additional allowance will apply to the fee herein named.

Should any doubt arise in your mind upon any point of the law, you will promptly communicate with this office and await instructions in the premises.

WILLIS DRUMMOND, *Commissioner.*
TO REGISTERS AND RECEIVERS of *United States Land-Offices.*

FORM A.

Soldiers' homestead act of June 8, 1872.

HOMESTEAD DECLARATION.

LAND OFFICE, — — —.

No. 1.

I, — — —, do hereby declare and give notice that I claim for a homestead, under the act of June 8, 1872, granting homesteads to honorably discharged soldiers and sailors, their widows and orphans, the — — —; and I further declare that I take the said tract of land for actual settlement and cultivation, and for my own use and benefit.

Per — — —, his Attorney in Fact.

FORM B.

Soldiers' homestead act of June 8, 1872.

APPLICATION.

LAND OFFICE, — — —, 187 .

I, — — —, hereby apply to enter, under the provisions of the act of June 8, 1872, amendatory of an act entitled "An Act to enable honorably discharged soldiers and sailors, their widows and orphan children, to acquire homesteads on the public lands of the United States," the — — —, containing — — — acres, and for which I filed my declaration on the — — — day of — — —, — — —, through — — —, my duly appointed agent.

I, — — —, register of the land-office at — — —, do hereby certify that — — — filed the above application at this office on the — — — day of — — —, — — —, and that he has taken the oath and paid the fees and commissions prescribed by law.

Register.

FORM C.

Soldiers' homestead act of June 8, 1872.

AFFIDAVIT.

LAND OFFICE, — — —, 187 .

No. —.

I, — — —, of — — —, do solemnly swear that I am a — — —, of the age of twenty-one years, and a citizen of the United States; that I served for ninety days in company — — —, — — — Regiment United States Volunteers; that I was mustered into the United States military service the — — — day of — — —, — — —, and was honorably discharged therefrom on the — — — day of — — —, — — —; that I have since borne true allegiance to the Government; and that I have made my application No. —, to enter a tract of land under the provisions of the act of June 8, 1872, giving homesteads to honorably discharged soldiers and sailors, their widows and orphan children; that I have

made said application in good faith; and that I take said homestead for the purpose of actual settlement and cultivation, and for my own exclusive use and benefit, and for the use and benefit of no other person or persons whomsoever; and that I have not heretofore acquired a title to a tract of land under this or the original homestead law, approved May 20, 1862, or the amendments thereto, or voluntarily relinquished or abandoned an entry heretofore made under said acts: so help me God.

Sworn and subscribed to before me, _____, register of the land-office, at _____, this _____ day of _____, 187 .

Register.

FORM D.

Soldiers' homestead act of June 8, 1872.

RECEIPT.

No. —.

Use same form as now in use with change of act.

[For forms now in use, see No. 265.]

No. 315.

CIRCULAR. .

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 11, 1873.

REGISTERS AND RECEIVERS, *U. S. District Land Offices.*

GENTLEMEN:—Referring to page 6 of the supplemental portion of my general circular of August 30, 1872, it is hereby ordered that in case an applicant, under the provisions of the act of June 8, 1872, is unable to furnish a certified copy of his certificate of discharge from the U. S. Service, you will require those portions of the affidavit (Form C), comprised in the first four lines thereof, to be corroborated by the testimony of two disinterested, respectable witnesses.

WILLIS DRUMMOND, *Commissioner.*

No. 316.

EWING v. WALKER.

Only *honorably discharged* soldiers, sailors, and marines, who served ninety days during the rebellion, and remained loyal, are entitled to enter land under the act of June 8, 1872.

A person still in the naval service, whose family are not upon the land, cannot be allowed a homestead entry under the act of May 20, 1862.

Letter to Register and Receiver, San Francisco, Cal., Nov. 10, 1873.

No. 317.

JAMES LYNCH.

In computing the time of service during the rebellion, the General Land-Office is governed by the dates of the President's proclamations of April 15, 1861, calling out the militia, and August 20, 1866, declaring the war at an end.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 2, 1874.

REGISTER AND RECEIVER, *Litchfield, Minnesota.*

GENTLEMEN:—I am in receipt of your letter of the 13th of December last, enclosing a certified copy of the discharge of James Lynch from the United States Marine Corps, showing that said Lynch was enlisted in the United States marine service December 8, 1852, and that he was discharged therefrom December 8, 1862, and asking the instructions of this Office as to the time the war commenced and closed for purpose of computing the time of service during the recent rebellion of parties claiming the benefits of same on their homestead entries under the law of June 8, 1872.

In reply, I have to state that this Office is governed by the following dates in computing the time of service rendered during the rebellion, viz: April 15, 1861, the date of the President's proclamation calling out the militia to suppress the rebellion; and August 20, 1866, the date of the President's proclamation declaring the war at an end in the State of Texas.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 318.

SOLDIERS' HOMESTEAD AFFIDAVIT.

The affidavit required in original homesteads under act of June 8, 1872, may be taken before the clerk of the county court when for good cause the applicant cannot attend at the district land office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 31, 1874.

REGISTER AND RECEIVER, *Salina, Kansas.*

GENTLEMEN:—Referring to the 14th and 15th sections, page 5 of general circular of August 30, 1872, in relation to the affidavit required in homestead cases, you are hereby advised that the latter section applies as well in cases of soldiers' homesteads (original, not additional) under the act of June 8, 1872, as in other homesteads, and you will govern yourselves accordingly in acting upon such cases.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 319.

PRESTON SOWARDS.

A soldier discharged for disability prior to expiration of term of first enlistment is entitled to only so much time for second enlistment as he may have served after expiration of term of first enlistment.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 14, 1874.

REGISTER AND RECEIVER, *La Crosse, Wisconsin.*

GENTLEMEN:—I am in receipt of your letter of the 24th ultimo, transmitting proof in homestead case No. 6,116 of Preston Sowards, dated

February 12, 1873, by his widow, Lucy M. Sowards, for my consideration.

It appears from the proof submitted that Mr. Sowards enlisted in the army in August, 1862, for three years, and was discharged therefrom in February, 1863, for disability; that he re-enlisted February 23, 1864, and received his final discharge May 4, 1865.

It is evident that Mrs. Sowards in submitting her proof supposed that she would be entitled, under act of June 8, 1872, to have allowed to her as a part of the five years' residence on homestead, required by act of May 20, 1862, the full terms of her husband's first enlistment, and in addition thereto the time he served under his second enlistment; but it is held by this Office that when a party is discharged for disability before the expiration of his first term of enlistment, and re-enlists before the expiration of the full term of his first enlistment, he is entitled to only so much time for his second enlistment as he may have served after the expiration of the term for which he first enlisted. It will be seen from the certificates of discharge in this case that Mr. Soward's second term of enlistment expired *previous* to the expiration of his first term of enlistment, and Mrs. Sowards will only be allowed *three* years towards the five years' residence required for her husband's service in the army.

Under the above ruling you will perceive that Mrs. Sowards will be required to continue settlement and cultivation of her land for a term, which added to the three years allowed as above, will meet the requirements of the law, and then it will be necessary for her to submit through you supplemental proof of continued settlement and cultivation up to that date.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 320.

G. M. BURLINGAME.

1. A soldier is not obliged to credit his term of service on his homestead.
2. After a soldier has resided on his homestead long enough to make with his military service five years, further residence is unnecessary to secure patent.
3. In case of disability the final proof will be allowed by the General Land-Office to be made before the county clerk.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., August 22, 1874.

G. M. BURLINGAME, P. M., *Burlingame, Merrick county, Neb.*

SIR:—In answer to the three queries contained in your letter of July 31 last, I have to state:

First. A soldier who has made an entry under the homestead laws is not required to avail himself of the privileges of the act of June 8, 1872, as regards the crediting of his term of military service in the United States army during the war of the rebellion as a part of the five years' residence and cultivation required by the act of May 20, 1862. The privilege is optional with himself.

Second. If the period of a soldier's actual residence upon and cultivation of the land embraced in his homestead entry, the same to be in no event less than one year, added to the term of his military service in the United States army during the war of the rebellion, make up the five years required by the act of May 20, 1862, nothing further of settlement and cultivation is necessary to enable the party to perfect his

entry; and he will not violate any legal requirement if, in that case, he should absent himself from the land. The final proof may be made at any time within seven years from the date of his entry.

Third. In cases where parties are unable from physical disability, or other circumstances beyond their control, to attend in person at the proper district land office for the purpose of making final proof on their homestead entries, this Office, upon a satisfactory showing of such disability, will so far relax the general rule as to allow the proof to be made before the clerk of the court for the county where the parties reside. The affidavit of parties, supported by witnesses, stating all the facts in the case, should be submitted to this Office, through the district office, for its consideration and action.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 321.

BURT v. DOPP.

The time a homestead claimant was in the U. S. military service in the late rebellion should be taken as a part of the five years in which a contest under the 5th section of the homestead act could be commenced, and if such period, when added to the time of actual residence and cultivation, was more than five years before the contest commenced, the contest should be dismissed.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Dec. 11, 1874.

SIR:—I have examined the case of Courtland S. Burt v. Matthew Dopp, involving title to the N. E. $\frac{1}{4}$ sec. 34, Tp. 23, R. 5 W., Augusta, Kansas, on appeal from your decision of June 11, 1874. Dopp made homestead entry on said premises June 6, 1871, and resided upon and cultivated the same from that date until April 25, 1873. He had been a soldier in the service of the United States in the late rebellion, and the time of such service, added to the above period of actual residence and cultivation, exceeded five years on the said 25th of April, 1873.

Burt, on the 31st of March, 1874, commenced a contest before the local officers, alleging that Dopp had abandoned the land on the 25th of April, 1873, and that the abandonment had continued from and after that date.

You held that Dopp should be allowed to make final proof. I think you were right. The time that Dopp was in the U. S. military service should be credited as a part of the five years of residence required of him. (Act of June 8, 1872, 17 Stats., 333.)

Including that time, the five years given by the 5th section of the homestead act, in which to institute a contest, had expired before this proceeding was commenced.

I affirm your decision and herewith return the papers transmitted with your letter of the 12th September last.

Very respectfully,

C. DELANO, *Secretary.*

The Hon. Commissioner of the General Land-Office.

No. 322.

J. W. BONINE.

In making final homestead proof a soldier must present a certified copy of his discharge from the U. S. army during the war of the rebellion. Satisfactory evidence (consisting of his own affidavit and the testimony of two witnesses) of service in the army, or an official statement from the War Department, may be presented instead of the copy of the discharge.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., December 19, 1874.

MR. J. W. BONINE, *Vermillion, D. T.*

SIR:—In reply to your letter of the 22d ultimo, relative to making final proof on a homestead entry under the soldiers' and sailors' homestead act of June 8, 1872, I have to state, that when making said proof the party will be required to present to the proper district land officers a certified copy of his discharge from the U. S. army during the war of the rebellion, or in the absence of the same "satisfactory evidence" of said service, which may consist of the party's affidavit of the facts, corroborated by the testimony of two disinterested witnesses, will be accepted. If said "satisfactory evidence" cannot be obtained, and if obtained, fails to show that the party had received *an honorable discharge*, (which you intimate is the case with party referred to in your letter,) this Office will, upon application and on receipt of the requisite data of the party's services, consisting of his name, number of regiment, alphabetical designation of the company in which he served, branch of service, and State where enlisted, obtained from the War Department an "official statement" of said service which will be forwarded to him, and may be used in making said final proof.

Very respectfully,
S. S. BURDETT, *Commissioner.*

No. 323.

S. R. HARRISON.

Rights of an orphan of a soldier or sailor under the act of June 8, 1872. The guardian is not, but the children are, required to reside on the homestead during the prescribed period of time.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 29, 1874.

MR. S. R. HARRISON, *P. O. Box No. 131, Salina, Kan.*

SIR:—In reply to your letter of the 12th ultimo, relative to the rights of a minor orphan child of a deceased Union soldier under the soldiers' and sailors' homestead act of June 8, 1872, I have to refer you to article 2 of instructions explanatory of said act as found on page 22 of circular of Aug. 30, 1872, herewith enclosed.

The guardian is not required to reside *in person* upon the land entered by him in behalf of his ward, but the child must reside thereon for such period as the case may require. Improvements and cultivation of the land may be made by the guardian or some party authorized by and acting for him.

Very respectfully,
S. S. BURDETT, *Commissioner.*

No. 324.

JAMES A. BALCH.

Orphan children of other than deceased Union soldiers and sailors whose widows are dead or married cannot make homestead entries through guardians.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Dec. 15, 1874.

Mr. JAMES A. BALCH, *Goldendale, Klitkat Co., Wash. Ty.*

SIR:—In reply to your letter of the 5th ult., relative to the rights of a minor orphan child, whose deceased father had not made an entry under the homestead laws, I have to state that the privilege of making homestead entries, through duly appointed guardians, is confined to the minor orphan children of deceased Union soldiers whose widows are either dead or married.

Very respectfully,
S. S. BURDETT, *Commissioner.*

No. 325.

F. T. PATTON.

Soldiers' homestead declarations must be rejected when received by mail. Local officers are not allowed to enter land under the Timber-culture act.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 14, 1874.

REGISTER AND RECEIVER, *Grand Island, Neb.*

GENTLEMEN:—In reply to your letter of the 20th ultimo, I have to state that homestead declarations must in all cases be filed by the soldier in person, or by his duly authorized agent, and they should be rejected when received by mail or in any other manner than that above stated.

Referring to your second inquiry I have to say that the local officers are not allowed to enter land under the timber-culture act of March 3, 1873.

Very respectfully,
WILLIS DRUMMOND, *Commissioner.*

No. 326.

INSTRUCTIONS.

Lands covered by unexpired homestead filings.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 27, 1874.

REGISTER AND RECEIVER, *Denver, Colorado.*

GENTLEMEN:—In reply to yours of the 17th inst., I have to state that lands covered by unexpired homestead filings under the act of June 8, 1872, may be filed upon under the pre-emption laws. Such lands may be entered by homestead parties, or if the lands are in market they may be entered at private entry, but the homestead or private entry, as the case may be, would be subject to the prior right of the party under his filing to make entry the same as in the case of lands covered by pre-emption filings.

Very respectfully,
S. S. BURDETT, *Commissioner.*

No. 327.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 17, 1873.

REGISTERS AND RECEIVERS, OF U. S. LAND OFFICES.

GENTLEMEN:—The attention of this Office has been called to a number of cases in which parties who, having filed Homestead Declaratory Statements under the provisions of the first section of the act of June 8, 1872, have failed, from various causes, to make homestead entry of the tracts embraced in the said Declaratory Statements within six months from the date thereof.

I have therefore to state that, in cases of this character, where a party who, having filed, in person or by an agent, a Homestead Declaratory Statement upon a tract of land, fails by reason of sickness, misfortune, or any insurmountable cause, to make a homestead entry thereof within six months from the date of said filing, such party will be held to have *exhausted his right to file a Declaratory Statement* under the said act, but will be allowed to make a *Direct Homestead Entry* of the tract so filed upon, if no valid adverse right thereto shall have intervened; or, in case such right has intervened, to enter any other tract of the public lands subject to such entry: *Provided*, That such party make affidavit before you, or either of you, that it was his *bona fide* intention at the date of filing the said Declaratory Statement to follow the same by a personal entry of the land therein described within six months from the date thereof; that he was prevented from so doing by an insurmountable cause—stating the cause; and in case he seeks to enter a tract other than that filed on—which will only be allowed when a valid adverse right shall have attached to the tract so filed on—that he has not sold, bartered, or in any way whatever alienated for gain or profit his right to file a Declaratory Statement under the said law, or his claim or right under his filing, or to the land covered thereby.

You will thereupon transmit to this Office, in a special letter, all the papers in the case for my consideration.

In default of the affidavit, as aforesaid, all persons failing to make homestead entry of lands filed upon by them, or their agents, under the said act, within six months from the date of such filing, will be held to have forfeited all rights under the homestead laws.

WILLIS DRUMMOND, *Commissioner*.

No. 328.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
August 9th, 1870.

GENTLEMEN:—The following is the 25th section of the Act of Congress approved July 15, 1870, entitled "An Act making appropriations for the support of the Army for the year ending June 30, 1871, and for other purposes," viz: [Part II., No. 27.]

By these provisions, the Homestead Law of 20th May, 1862, and the Acts amendatory thereof, are so far modified as to allow entries to be made by the parties mentioned therein, of the maximum quantity of one

quarter section, or one hundred and sixty acres, of land held at the double minimum price of \$2.50 per acre, instead of one-half quarter section, or eighty acres, as heretofore.

In case of a party desiring to avail himself thereof, you will require him to file the usual homestead application for the tract desired, if legally liable to entry, to make affidavit according to the form hereto annexed, instead of the usual homestead affidavit, and on his doing so, allow him to make payment of the \$10 fee stipulated in the Act of 20th May, 1862, and the usual commissions on the price of the land at \$2.50 per acre, the entry to be regularly numbered and reported to this office in your monthly homestead returns. (The privileges conferred by this act cannot be assigned, nor is the benefit of entry under it available for widows or heirs of deceased soldiers.—Reissue of this circular, March 6, 1871.)

Regarding settlement and cultivation, the requirements of the law in this class of entries are the same as in other homestead entries.

Very respectfully,

Your obedient servant,

JOS. S. WILSON, *Commissioner*.

REGISTER AND RECEIVER.

AFFIDAVIT.

LAND OFFICE AT _____,

(Date) _____.

I _____, of _____, having filed my application No. _____ for an entry under the provisions of the Act of Congress approved May 20, 1862, and desiring to avail myself of the 25th section of the Act of July 15, 1870, in regard to land held at the double minimum price of \$2.50 per acre, do solemnly swear that I am the identical _____ who was a _____ in the company* commanded by captain _____, in the _____ regiment of _____, commanded by _____, in the war of 1861, that I continued in actual service for ninety days, and have remained loyal to the government; that said application No. _____ is made for my exclusive benefit, and for the purpose of actual settlement and cultivation, and not directly or indirectly for the use or benefit of any other person or persons, and that I have not heretofore had the benefit of the Homestead Law.

Sworn to and subscribed before me this _____ day of _____.

(Register or Receiver of the Land-Office.)

DEPARTMENT OF THE INTERIOR, August 8, 1870.

Approved:

(Signed,)

J. D. COX, *Secretary*.

No. 329.

WATSON v. WHEELER.

Watson transmitted to the local officers his soldier's homestead application. The affidavit lacked the seal of the county clerk. It was re-

*Where the party was a regimental or staff officer, or was in a different branch of the service, the affidavit must be varied in form according to the facts of the case.

turned for correction and before its return Wheeler made homestead entry of the land. Held: That the omission of the seal was a clerical error which should be corrected without prejudice and that Watson was entitled to the land.

Decision by the Secretary, January 31, 1872.

No. 330.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 15, 1872.

TO REGISTRARS AND RECEIVERS OF UNITED STATES LAND OFFICES.

GENTLEMEN:—One class of cases arising under the act of June 8 1872, I have deemed it advisable to reserve for special instructions.

The first section of the said act provides that every soldier, sailor, or marine who has served in the Army, Navy, or Marine Corps of the United States, during the rebellion, for ninety days, and who was honorably discharged and has remained loyal to the Government, shall, *on compliance with the provisions of the act of May 20, 1862, "and the acts amendatory thereof, as hereinafter modified, be entitled to enter upon and receive patents for a quantity of public lands (not mineral) not exceeding 160 acres," etc. : Provided, That the time which the homestead settlers shall have served in the Army, Navy, or Marine Corps aforesaid, shall be deducted from the time heretofore required to perfect title ; or if discharged on account of wounds received or disability incurred in the line of duty, then the term of enlistment shall be deducted from the time heretofore required to perfect title, without reference to the length of time he may have served : Provided, however, That no patent shall issue to any homestead settler who has not resided upon, improved, and cultivated his said homestead for a period of at least one year after he shall commence his improvements as aforesaid."*

Under the foregoing provisions, settlers upon homesteads not yet perfected, which were entered under the act of May 20, 1862, or the acts amendatory thereof of prior date to April 4, 1872, will be required to show a strict compliance with the said acts prior to April 4, 1872, to entitle them to the benefit of the modifications of the act of that date, as amended by the act of June 8, ultimo.

The proof in such cases must show that the settler made a *bona fide* settlement upon his tract within six months from date of entry ; that he has not actually changed his residence, or abandoned the said tract for more than six months at any time, and that he has improved, cultivated, etc., the same in conformity with the provisions of the said acts. The modifications of prior acts, as provided in the act of June 8, ultimo, *cannot be construed to cure any failure on the part of this class of settlers to comply with the provisions of the said prior acts.*

In all cases of this class you will require, in addition to the final affidavit of the homestead party, that he shall swear that he served for ninety days in the United States service, giving name and number of regiment, when mustered into the service, and when honorably discharged ; also that he has since borne true allegiance to the Government.

In many cases the settlers will have completed, lacking a few months,

the five years' settlement and cultivation "heretofore required to perfect title." To such the only benefit that can accrue under the provisions of the act of June 8, ultimo, will be a deduction of the said few months, and the immediate issue of a final certificate, on proof of being made as hereinbefore required.

WILLIS DRUMMOND, *Commissioner*.

No. 331.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 3, 1873.

TO REGISTERS AND RECEIVERS OF U. S. LAND OFFICES:

GENTLEMEN:—In cases of homestead entry initiated under the provisions of acts of Congress prior to that of April 4, 1872, (now known in its amended form as approved June 8, 1872,) you will require, in addition to the final affidavit of the homestead settler, a certified copy of his certificate of discharge from the United States service; or, if this cannot be furnished, the affidavit of the said settler that he served for ninety days in the United States service during the war of the rebellion—giving the number and State of his regiment, the date on which he was mustered into the service, and that on which he was honorably discharged therefrom; also, that he has since borne true allegiance to the Government. To this affidavit you will require the corroborative testimony of two respectable witnesses.

My circular of July 15, 1872, is hereby modified to the above extent.

WILLIS DRUMMOND, *Commissioner*.

(B) ADDITIONAL.

No. 332.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
February 5, 1873.

GENTLEMEN:—Where persons entitled to the privilege shall apply to enter additional land by virtue of the 2d section of the Act of June 8, 1872, you will, in case the party had previously made final proof upon his original homestead entry, issue to the applicant, upon the proper proof of military service, a final certificate of the current number and date, referring thereon to the number of the original entry and the previous final certificate.

In case the party has not made proof on his original homestead entry when he applies for additional land, you will allow him to make the additional entry, and forward the application and other papers, giving them the current number of homestead entries, referring thereon to the original entry; then, when the party makes proof on the original entry, you will issue one final certificate embracing the tracts in both entries,

referring thereon to the additional as well as the original entry, so that one patent may issue for the lands in both entries.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER.

No. 333.

N. H. HEFNER.

First entry of 80 acres.

Held—That he may enter 80 acres contiguous under 2d section of act of June 8, 1872, and case sent to the land office to ascertain certain facts.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Dec. 5, 1872.

SIR:—I have examined the application of N. H. Hefner to amend his homestead entry, No. 4742, so as to include eighty acres of section 7, T. 3, R. 4, E., Beatrice, Nebraska, in addition to eighty acres of section 2, included in his original entry, on appeal from your adverse decision of July 15th, 1872.

I should affirm your decision on the ground that a homestead right, which is single and indivisible, is initiated at the time of entry, takes effect only upon lands subject to homestead appropriation and actually entered by the claimant at that date, and that the quantity cannot be thereafter augmented, if it were not that the claimant appears, *prima facie*, to be entitled to enter the tract claimed under the second section of the act of June 8th, 1872. The only objection appearing from the papers in the case, alleged in argument not reported by you, is that the land claimed, subsequently to the rejection of Hefner's second application, was entered as a homestead by one James E. Pheasant.

If you shall find upon a re-examination of all the facts in the case, in connection with the records of your office, that Hefner is qualified to claim, under the act of 1872, (as appears *prima facie* from his affidavits) and that the subsequent entry of Pheasant was made *pendante lite* then the application of Hefner should be allowed under the act of 1872, If you find otherwise, then his application should be rejected on the ground stated.

I herewith return the papers transmitted with your letter of the 4th ultimo, for a disposition of the case by you in the manner above specified.

Very respectfully, your obedient servant,

B. R. COWEN, *Acting Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 334.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE.

Washington, D. C., March 28, 1873.

REGISTERS AND RECEIVERS of *U. S. Land-Offices*.

GENTLEMEN:—I have to call your attention to the following act of Congress, approved March 3, 1873, amendatory of the act of June 8, 1872. [Part II., No. 93.]

It will be perceived that the above act merely abrogates that provision of the act of June 8, 1872, which required the tract or tracts embraced in an entry of additional land to be *contiguous* to the original homestead.

Hereafter, therefore, you will permit entries of this class, by duly qualified applicants, under the following regulations, upon any public lands in your district subject to Pre-emption and Homestead entry :

Where persons entitled to the privilege shall apply to enter additional land by virtue of the 2d section of the act of June 8, 1872, or the amendatory act of March 3, 1873, you will, in case the party had previously made final proof upon his original homestead entry, issue to the applicant, upon the proper proof of military service, a final certificate of the current number and date, referring thereon to the number of the original entry and the previous final certificate.

In case the party has not made proof on his original homestead entry when he applies for additional and, you will allow him to make the additional entry, and forward the application and other papers, giving them the current number of homestead entries, referring thereon to the original entry ; then, when the party makes proof on the original entry, you will issue one final certificate embracing the tracts in both entries, referring thereon to the additional as well as the original entry, so that one patent may issue for the lands in both entries.

WILLIS DRUMMOND, *Commissioner*.

No. 335.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 3, 1873.

GENTLEMEN :—Referring to my letter of the 26th of August last, relative to applications to enter additional land under the provisions of the Act of June 8, 1872, as amended by the Act of March 3, 1873, I have to direct—

First. That when the applicant's first entry has been consummated, you will send up, as in ordinary cases, an application, affidavit, and receipt, (bearing the proper number of your homestead series,) together with the requisite proof of the party's military service, charging the same fee and commissions as in cases of original entry. At the same time, on payment of the usual final commissions, you will issue final certificate and receipt, covering the additional tract and bearing the proper number of your final homestead series, as also a reference to the original entry and previous final certificate, by number, and also by district, where the party's first entry shall have been made in another district.

Second. In case the party has not made proof on his original homestead entry when he applies for additional land, you will allow him to make the additional entry on proper proof of military service and payment of the usual fee and commissions, and forward the application and other papers, giving them the current number of homestead entries, referring thereon to the original entry ; then, when the party makes proof on the original entry, you will issue one final certificate and receipt embracing the tracts in both entries, referring thereon to the additional

as well as the original entry, so that one patent may issue for the lands in both entries; yet where the original entry and the additional entry are made in different land districts, this rule must be departed from, so far as regards the issuing of one final certificate and receipt for both.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER.

No. 336.

CIRCULAR.

• DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 5, 1874.

TO REGISTERS AND RECEIVERS OF U. S. LAND OFFICES.

GENTLEMEN:—In view of the many complaints presented to this Office of the hardships, by reason of distance, insufficient means, physical disability, &c., involved in the regulation which requires the personal attendance of applicants for additional Homestead entries at the Land-Office of the District in which the desired additional land may be situated, I have been led to make a careful examination of the several Homestead laws in respect to this point.

I find that the regulation complained of is not a necessary incident to the statute, but is such a discretionary ruling only as may properly be modified whenever, in the practical administration of the law, it is found to work great general hardship. Under the law, the only tests of an applicant's right to take additional land are, *first*, the fact of his military or naval service; and, *second*, the fact of his original entry prior to June 8, 1872,* of less than 160 acres. All the requirements as to proof of settlement and improvement relate exclusively to the original tract, the additional land being considered as practically an integral part of the original entry, and may be included in one and the same patent in cases where the original entry is not already perfected.

I have therefore to direct that hereafter a party who is entitled to make an entry of additional land under the second section of the act of June 8, 1872, as amended by the act of March 3, 1873, be permitted to make the required affidavit before the clerk of any court of record for the county in which he resides, or before the Register or Receiver of any U. S. Land-Office, and to transmit the same, together with his formal application and proof of military or naval service, and the fee and commissions prescribed by law, by mail, or through an attorney, to the Land-Office of the District in which the land applied for may be situated.

The proof of military or naval service to be transmitted may consist either of the original certificate of discharge, or a copy thereof duly certified under the hand and seal of the clerk before whom the affidavit is made, or under the hand of the Register or Receiver of any U. S. Land-Office; and in all cases of this kind the application and affidavit must contain a reference to the original entry by its number and district, and to the land embraced therein by a subdivisinal description thereof, with numbers of section, township, and range.

S. S. BURDETT, *Commissioner*.

Approved: W. H. SMITH, *Acting Secretary of the Interior*.

* Prior to June 22, 1874, date of passage of Revised Statutes. See Section 2306.

No. 337.

WHITE v. LAFFERRY.

A receiver of a land-office is entitled to make final proof on a homestead entry made by him prior to his appointment.

A receiver of a land-office who has made final proof upon a homestead entry made by him prior to his appointment as receiver may make an additional entry under the provisions of the act of June 8, 1872.

A contest for abandonment of an additional entry made under the act of June 8, 1872, will not be entertained.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Oct. 5, 1874.

REGISTER AND RECEIVER, *Dardanelle, Arkansas.*

GENTLEMEN:—I am in receipt of yours of May 19, 1874, enclosing papers in the contested case of Silas White v. James R. Lafferry for abandonment of homestead entry No. 8,689 upon the W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, sec. 23, T. 7 N., R. 21 W.

It appears that at the time of making entry Mr. Lafferry was receiver of the land-office at Dardanelle, but said entry was made as an additional entry under act of June 8, 1872, to homestead entry No. 1,128, made June 11, 1868, prior to his appointment as receiver.

Mr. Lafferry has made final proof on his entry No. 1,128, per certificate No. 87, and under the rulings of this office was entitled to make an additional entry under the act of June 8, 1872, while acting as receiver of the land-office as aforesaid.

A contest for the abandonment of his additional entry under act of June 8, 1872, cannot be entertained, as under the law he is not required to make settlement and cultivation thereon. You will, therefore, notify the parties that the above contest is dismissed.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 338.

CHARLES RADAMACKER.

A soldier or sailor who homesteaded 80 acres and entered 40 acres additional under the act of June 8, 1872, will be allowed to enter enough more under the act of March 3, 1873, to make up 160 acres, if he served ninety days or more during the rebellion, &c.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., August 25, 1874.

SIR:—I have examined the application of Charles Radamacker to enter as an additional homestead the N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ section 24, 90, 46, Sioux City, Iowa, on appeal from your decision of Dec. 29, 1873, rejecting his said application.

It appears from the record that Radamacker, who was a soldier, and entitled to the benefits of the 2d section of the act of June 8, 1872, (17 Stat., 333,) August 15, 1872, made an additional entry of a contiguous tract of 40 acres, making his entire claim then consist of 120 acres. The 2d section of the act of June 8, 1872, was amended by the act of March 3, 1873, (17 Stat., 605,) by such a change in the language as in effect to remove a previous restriction of the right of entry to contiguous land. The question presented is whether, under these circumstances,

the claimant is now entitled to enter an additional quantity of 40 acres, not contiguous, under the act as amended.

I think he is entitled. He is clearly within the spirit, and I am satisfied also within the letter, of the act. The 2d section as amended reads as follows, viz: "That any person entitled under the provisions of the foregoing sections to enter a homestead, who may have heretofore entered under the homestead laws a quantity of land less than 160 acres, shall be permitted to enter so much land as, when added to the quantity previously entered, shall not exceed 160 acres."

Under this 2d section, any person entitled under the preceding section of the act, and who had therefore entered under the homestead laws, a less quantity than 160 acres, is entitled to an additional entry to make up the deficiency. The only requirements of the preceding section are that the claimant shall have served in the army of the United States for 90 days or more during the recent rebellion, been honorably discharged, and remained loyal to the government. It is admitted that the claimant herein did serve in the army of the United States during the recent rebellion for a period exceeding 90 days; that he was honorably discharged; that he has remained loyal to the Government, and that he had, previously to said act of 1873, entered under the homestead laws a less quantity of land than 160 acres, to wit, 120 acres.

In my opinion he is entitled to an additional entry. He is within the letter and spirit of the act, and to hold otherwise would be to inflict a penalty upon a deserving claimant for promptly taking advantage of the prior statute.

I therefore reverse your decision and return herewith the papers transmitted with your letter of April 25, 1874.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

To the Commissioner of the General Land-Office.

No. 339.

JOHN N. LANGFORD.

A homestead declaratory statement can only be filed in case of an original homestead entry, and not for an additional tract.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Sept. 23, 1874.

SIR:—I have considered the appeal of John N. Langford from your decision of February 21, 1874, cancelling his additional soldier's homestead entry, made November 8, 1873, under acts of June 8, 1872, and March 3, 1873, of the N. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, section 2, T. 11 N., 63, Lincoln district, Nebraska.

It appears that on June 21, 1869, Langford made an original homestead entry of the N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, section 14, same township and range, and on May 13, 1873, filed H. D. S. for the additional tract described.

May 21, 1873, the additional tract was included in a homestead entry by one Flanagan. You held that homestead declaratory statement can only be filed in case of an original entry, and not for an additional tract; that Langford's filing being unauthorized did not protect the land it covered against the subsequent formal entry of Flanagan.

This is a good rule in practice, and I think authorized by the law.

I affirm your decision, and return the papers in this case transmitted with your letter of June 11 last.

Very respectfully,

C. DELANO, *Secretary.*

To the Commissioner of the General Land-Office.

No. 340.

ERI P. SWEET.

A soldier is entitled to 160 acres of land under the homestead law of June 8, 1872, provided his original entry of less than 160 acres was made prior to the passage of said act, as an adjoining farm or as a homestead entry.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., February 27, 1875.

SIR:—I have examined the appeal of Eri P. Sweet from your decision of December 10, 1874, refusing to allow him to make an entry of the S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and N. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, of sec. 13, Tp. 23, R. 12 W., La Crosse, Wisconsin, under the act of June 8, 1872.

Sweet was a soldier in the war of the rebellion, and is personally qualified to make an additional homestead entry under the second section of said act, unless his former entry was such as to deprive him of that privilege. In 1866, being the owner of 80 acres in said section 13, he made an entry under the homestead law of 80 acres in the same section, as a contiguous homestead. In October, 1872, he applied to enter the lands in controversy, which were adjoining those included in his original homestead entry.

You held that he was not entitled under the act of 1872 to make the entry. In this, I think, you erred. The second section of that act provides "that any person entitled under the provisions of the foregoing section to enter a homestead, who may have heretofore entered *under the homestead laws*, a quantity of land less than one hundred and sixty acres, shall be permitted to enter, under the provisions of this act, so much land contiguous to the tract embraced in the first entry as, when added to the quantity previously entered, shall not exceed one hundred and sixty acres."

Sweet was entitled under section 1; he had entered 80 acres only *under the homestead laws*. His original 80 he did not acquire under the homestead laws. He was, therefore, clearly entitled to enter another contiguous 80 acres.

I reverse your decision, and herewith return the papers transmitted with your letter of the 19th inst.

Very respectfully,

C. DELANO, *Secretary.*

To the Commissioner of the General Land-Office.

[See foot note to No. 336.]

III. INDIAN HOMESTEADS.

No. 341.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., February 11, 1870.

SIR:—I have considered your letter of the 4th ultimo in relation to the right of certain Indians of Wisconsin to enter public lands under the homestead law. After carefully considering the question involved, I conclude that, in the absence of more explicit legislation on the subject, an Indian, if otherwise qualified, is entitled to the benefits of the homestead law if he has voluntarily dissolved all connection with his tribe, so that by reason thereof he can no longer lawfully share in the annuities, exemptions, or privileges secured to it by acts of Congress or treaty stipulations. He is not, however, so entitled if he is in full relation with the tribe and enjoys such privileges, exemptions, or annuities. He certainly cannot be a citizen of the United States and at the same time a member of a tribe, or of, in the language of Chief Justice Marshall, "a domestic dependent nation," with whom we have recognized treaty stipulations.

He can only exercise the rights and assume the obligations of a citizen when his tribal relations have been permanently and wholly dissolved.

You will prepare and submit for my consideration rules and regulations for the government of the local officers in the premises.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

The Commissioner of the General Land-Office.

No. 342.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

April 1, 1870.

GENTLEMEN:—The honorable Secretary of the Interior, under date of February 11, 1870, has rendered a decision which, on the one hand, recognizes the right to the benefits of the homestead laws of otherwise qualified Indians who have voluntarily dissolved all connection with their tribes (so that by reason thereof they can no longer share in the annuities, exemptions, or privileges secured to them by acts of Congress or treaty stipulations); while, on the other hand, this privilege is denied to those in full relations with their tribes, and enjoying all the benefits accruing therefrom.

With the view, therefore, of giving this decision effect, you will, should an Indian apply to enter lands under the provisions of the homestead law, require him, in addition to the regular homestead affidavit, to swear and subscribe to the inclosed form "A" of affidavit, supporting the same by the form "B" of testimony, and report the cases with these additional papers in your monthly homestead returns in their regular order.

Be pleased to acknowledge the receipt of this circular letter.

Very respectfully,

JOS. S. WILSON, *Commissioner.*

REGISTER AND RECEIVER, *U. S. Land Office at* ———.

(A.)

I, _____, formerly of the _____ tribe of Indians, do solemnly swear that I have voluntarily dissolved all connection with that tribe, and that it is *bona fide* my intention to forego all claim to or share in any of its annuities or benefits, and in good faith to perform the duties of a citizen of the United States.

(B.)

(I or we.) _____ (Name or names.) do solemnly swear that, to the best of _____ knowledge and belief, _____ (Name of Indian.) formerly of the _____ (Name of tribe.) tribe of Indians, has dissolved all connection with said tribe, and does not claim or share any of the annuities or benefits inuring to said tribe of Indians by treaty or otherwise, but is performing all such duties as pertain to a citizen of the United States.

(Witness.)

(Signatures.)

Sworn and subscribed to before me this _____ day of _____, 18 _____.

(Register and Receiver).

CIRCULAR.

No. 343.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, March 25, 1875.

GENTLEMEN:—Under the Act of Congress approved March 3, 1875, "making appropriations to supply deficiencies in the appropriations for fiscal years ending June 30, 1875, and prior years, and for other purposes," it is provided, in the 15th section. [Part II. No. 136.]

In allowing proof of abandonment and entry to be made by Indians under the act first above mentioned, you will be governed by the following, viz: The Indian must make affidavit setting forth the fact of his Indian character; that he was born in the United States; that he is the head of a family, or has arrived at the age of twenty-one years; that he has abandoned his tribal relations and adopted the habits and pursuits of civilized life, and this must be corroborated by the affidavits of two or more disinterested witnesses. This done, you will permit him to enter the tract desired according to existing regulations, so far as applicable, under the Homestead Law, note the entry on your records, and make return thereof to this Office, with which you will send the affidavits submitted. You will observe in the law, as above quoted,

that the provisions of the 8th section of the act of May 20th, 1862, which admits of the commutation of homestead entries to cash, shall not be held to apply to entries under this act, and hence that such commutation is not admissible thereunder.

The 16th section of the act of March 3d, 1875, above referred to, confirms on certain conditions Indian homestead entries heretofore allowed. It calls for no action on your part, but is here quoted for your information, viz:

"SEC. 16. That in all cases in which Indians have heretofore entered public lands under the Homestead Law, and have proceeded in accordance with the regulations prescribed by the Commissioner of the General Land Office, or in which they may hereafter be allowed to so enter under said regulations prior to the promulgation of regulations to be established by the Secretary of the Interior under the fifteenth section of this act, and in which the conditions prescribed by law have been or may be complied with, the entries so allowed are hereby confirmed, and patents shall be issued thereon; subject, however, to the restrictions and limitations contained in the fifteenth section of this act in regard to alienation and incumbrance."

Acknowledge the receipt of this circular.

Very respectfully, your obedient servant,

S. S. BURDETT, *Commissioner*.

REGISTER AND RECEIVER.

Approved: C. DELANO, *Secretary*.

TITLE III.—PRE-EMPTIONS.

I. IN GENERAL.*

(A) QUALIFICATIONS.

No. 345.

SARAH E. R. HAZELRIGG.

Held—That a married woman who has minor children, and has been abandoned without cause by her husband, and left to support and maintain herself and children, is the head of a family within the meaning of the pre-emption law, and as such is entitled to pre-empt in her own name.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., October 13, 1871.

SIR:—I have considered the case of Sarah E. R. Hazelrigg, application to pre-empt the N. E. $\frac{1}{4}$ Section 8, T. 19, R. 16, Topeka, Kansas.

The local officers recommended that she be allowed to enter the land.

The Commissioner held that she was a *feme covert*, not the head of a family and not entitled to enter.

She has appealed to the Secretary. Her husband is a confirmed drunkard, who has abandoned her and her two children, and has contributed nothing to their support for more than two years. His whereabouts are unknown. Mrs. Hazelrigg went upon the land April 15, 1869. She has resided with her children on the land, cultivated and improved it continuously since that time. She has a comfortable house, five acres fenced, and two acres cultivated, and has fruit and shade trees set out and growing.

She has complied in good faith with the requirements of the law, and by her own exertion supports herself and children without any assistance from her husband.

I am of opinion that a wife who has minor children, and has been abandoned without cause, by her husband, such husband being a confirmed drunkard and having gone to parts unknown, and who is and has been for more than two years compelled to support and maintain herself and infant children without any aid from her husband is the "head of a family," within the meaning of the pre-emption law, and as such is entitled to the benefits of that law.

I recommend that the decision of the Commissioner be reversed, and that of the local officers affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, Oct. 13, 1871.

* For general instructions under the pre-emption laws, see No. 265.

No. 346.

ELLEN ALLANSON.

If a single woman marry after filing her declaratory statement, she abandons her right as a pre-emptor under the act of 1841.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., June 6, 1872.

REGISTER AND RECEIVER, *Alexandria, Minn.*:

GENTLEMEN:—I am in receipt of your letter of the 24th ultimo, enclosing the application of Mrs. Ellen Allanson to amend her D. S. 3515 to embrace lots 2, 3, and 4, sec. 29; lot 1, sec. 32, and lot 1, sec. 33, T. 125, R. 49, and stating that since the filing of said D. S. in June, 1868; said applicant has been married, her name at that time being Miss Ellen Brown.

In reply, I have to state that if a single woman marries after filing her D. S. she abandons her right as a pre-emptor under the act of 1841.

The filing of this claimant after her marriage with Mr. Allanson became null and void, and therefore her application to amend the same to cover the tracts described is hereby rejected.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

Affirmed by Secretary of the Interior, September 18, 1872.

See No. 279, 280.

No. 347.

WALKER'S HEIRS v. CALIFORNIA.

Held—That the evidence must show that the pre-emption claimant was a citizen of the United States, or had declared his intention to become such. That his declarations of being such a person were not competent evidence, although his admissions that he was not a citizen were competent.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, D. C., April 24, 1872.

SIR:—I have carefully considered the case of the heirs of William Walker, by his administrator, v. the State of California, involving title to the N. $\frac{1}{4}$, S. W. $\frac{1}{4}$, and W. $\frac{1}{4}$, S. E. $\frac{1}{4}$, Section 18, T. 4, S. R. 5 W. M. D. M., California, on appeal from the decision of the General Land Commissioner of September 14th, 1871, adverse to the State.

The land in controversy was withdrawn for railroad purposes January 30th, 1865, and restored as minimum land, October 19th, 1868. Township plat was filed February 7th, 1865. The State, through its authorized agent, selected the tract the same day, and renewed its application, October 19, 1868. Walker, February 10th, 1865, filed declaratory statement, alleging settlement December 26, 1861.

Without considering at length the various questions raised as to the validity of Walker's claim, it is only necessary to refer to the fact that the record does not show him to have been a native or a naturalized citizen of the United States, or that he had declared his intention of becoming one. A person claiming the privileges conferred by the pre-emption law must show affirmatively that he is within its provisions. In the absence of proof, he cannot be presumed to possess the qualifications prescribed by the act, any more than he can be presumed to have complied with the requirements relative to settlement and cultivation.

Each and every fact required to be shown in order to create a perfect right under the act must be affirmatively established.

So far as I have been able to discover by a careful examination of the voluminous testimony taken at the hearing there is but little competent evidence of Walker's citizenship. A certified copy of the record of his registration as a voter in Sanmateo county, Cal., proof of his having twice voted on such registration and the testimony of one witness who swore that he knew the claimant when both were children at Charleston, S. C., is in substance all the competent testimony bearing on this point. A number of witnesses testify to declarations of the claimant made during his life-time to the effect that he was born at Charleston, S. C., and was a citizen of the United States, but such declarations are not, according to the well-established rules of evidence, competent testimony in favor of the claimant and they can not be considered.

On the other hand it is an admitted fact that he was of Irish descent and several witnesses swore to declarations of the claimant during his life-time to the effect that he was born in Ireland; two swear that he declared he was born at Belfast in the north of that country, and one reports a connected history, according to his declarations, of the principal events of his early life. These declarations against his interest are all competent evidence (Greenleaf on Evid., s. s. 113, 171,) and must be considered in rebuttal of the evidence referred to above.

I am of opinion that his citizenship is not affirmatively established, that he is not, in this particular, shown to be within the provisions of the pre-emption law, and that his claim should therefore be rejected.

The only adverse claim thus being disposed of, I see no reason why the State should not be awarded the tract in controversy, any defect in the initiation of her title by location in the first instance, still uncured by the act of 1866, being remedied by the second location, October 19, 1868, after the withdrawal had become inoperative by the restoration of the land to market.

I therefore recommend that the decision of the Commissioner be reversed and that the land be awarded to the State.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by Acting Secretary Cowen, April 25, 1871.

No. 348.

MANNING v. NUSEBAUM.

Held—That a person who owned 320 acres of land in the Territory of Colorado at time of filing D. S., but did not own the same at the time he offered his final proof, is not such a person as can acquire a pre-emption right.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 24th April, 1873.

SIR:—I have considered the case of Sidney Manning v. Philip Nusebaum involving the right to the S. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ Section 4, T., 20, S. R. 64, W., Pueblo District, Colorado Territory.

Nusebaum, January 16, 1871, made cash entry of the tract.

Manning filed D. S. on the land January 25th, 1871, alleging settlement August 6th, 1870. At the time of *filing* he was half owner of over eight hundred acres of land in that Territory, but disposed of the same before offering his proof and payment.

It is admitted that he could not take the necessary affidavit to complete his claim until he had dispossessed himself of this land, but it is argued that the ownership of it at the time of filing did not disqualify him from initiating his claim by filing.

"The right of pre-emption" is well defined by counsel to be "a preference right to purchase a particular tract of land," and this right is acquired by a qualified person duly filing in the proper land-office for the land sought.

The 10th section of the pre-emption act provides that "no person who is the proprietor of three hundred and twenty acres of land in any State or Territory of the United States * * * shall acquire any *right of pre-emption* under this act," thus distinctly requiring this qualification as a condition precedent to acquiring any rights, or initiating any claim thereunder.

I affirm your decision rejecting Manning's filing, and consequently his claim, as invalid, and return the papers in the case transmitted with your letter of February 27th.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 349.

(B) SETTLEMENT AND FILING.

CIRCULAR.

PUBLIC NOTICE TO SETTLERS ON LANDS NOT RESERVED FOR RAILROAD PURPOSES.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, *February 10, 1870.*

WHEREAS the first section of the Act of Congress, approved 2d June, 1862, provides "That all the lands belonging to the United States, to which the Indian title has been, or shall be, extinguished, shall be subject to the operation of the pre-emption Act of the fourth of September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned: *Provided, however,* That when unsurveyed lands are claimed by pre-emption, notice of the specific tracts claimed shall be filed within six months after the survey has been made in the field; and, on failure to file such notice, or to pay for the tract claimed within twelve months from the filing of such notice, the parties claiming such lands shall forfeit all right thereto; provided said notices may be filed with the Surveyor General, and to be noted by him on the township plats, until other arrangements have been made by law for that purpose."

Therefore, in accordance with the instructions of the Secretary of the Interior, it is ordered that, from and after the publication of this notice for thirty days by the Register and Receiver, all settlers on *unsurveyed* lands will be required, within six months after the survey in the field (or, if surveyed before said publication, within six months

after publication), to file their declaratory statements with the Register of the proper local Land-Office, and make proof and payment within twelve months from the filing of such notice. If a Land-Office has not been opened, or if the plat has not been returned to the local office, the settler will be required to file his notice with the Surveyor General within six months after the survey in the field, and, upon the Land-Office being opened, and the plat filed therein, to make his proof and payment at such office within twelve months thereafter.

2d. That where settlers on *unsurveyed* lands have already filed their declaratory statements with the Register of the proper Land-Office, they will be required to make proof and payment within twelve months from and after the publication of this notice, and a failure to file and make proof and payment as specified herein will forfeit the claim.

3d. These rules will become operative, and be enforced in the several land districts from and after their publication for thirty days by the Register and Receiver, a copy of the published notice will be forwarded for the information of this office.

Acknowledge date of receipt hereof.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

To REGISTERS AND RECEIVERS U. S. Land Offices, and Surveyors
General of the United States.

CIRCULAR.

No. 350.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE, March 22, 1870.

WHEREAS, By Act of Congress approved 27th March, 1854, entitled, "An Act for the relief of settlers on lands reserved for railroad purposes," "every settler on lands which have been, or may be, withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them: *Provided*, They shall prove up their rights according to such rules and regulations as may be prescribed by the Secretary of the Interior."

AND WHEREAS the first section of the Act approved June 2, 1862 (12th Stat., 413), provides, "That all the lands belonging to the United States to which the Indian title has been or shall be extinguished shall be subject to the operations of the pre-emption act of the fourth of September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned: *Provided, however*, That when unsurveyed lands are claimed by pre-emption, notice of the specific tracts claimed shall be filed within six months after the survey has been made in the field; and on failure to file such notice, or to pay for the tract claimed within twelve months from the filing of such notice, the parties claiming such lands shall forfeit all right thereto, provided said notices may be filed with the Surveyor General, and to be noted by him on the township plats, until other arrangements have been made by law for that purpose."

Therefore, in accordance with instructions from the Secretary of the Interior, it is ordered that all settlers on lands *surveyed at date of set-*

tlement, and within the lateral limits of withdrawals for railroad purposes, where settlement was made *prior* to date of withdrawal, shall be required to file their declaratory statements within three months from the first day of June, 1870, and thereafter make proof and payment as required by law. And in all cases hereafter, settlers claiming pre-emption rights upon *surveyed* lands under the act of March 27, 1854, aforesaid, shall be required to file their declaratory statements, and make proof and payment in like manner as other pre-emptors, in conformity with the requirements of the pre-emption laws of 1841 and 1843.

2d. That settlers upon *unsurveyed* lands, including those within the lateral limits of withdrawals for railroad purposes settled upon prior to withdrawal, will be required within six months after survey in the field (or, if surveyed before the publication of this circular, within six months from the first day of June, 1870, aforesaid) to file their declaratory statements with the Register of the proper land office, or with the Surveyor General, where the plat of survey has not been filed with such Register, and thereafter to make proof and payment for the tract within twelve months from the date of filing, as required by the act of June 2, 1862, aforesaid. And where settlers on lands *unsurveyed at date of settlement* have already filed their declaratory statements with the register of the proper land office, they will be required to make proof and payment within twelve months from the first day of June next, as aforesaid.

Settlers failing to comply with the requirements of this circular will be held to have forfeited their claims as pre-emptors under the law.

JOS. S. WILSON, *Commissioner*.

TO REGISTERS AND RECEIVERS *U. S. Land Offices, and Surveyor General of the United States.*

No. 351.

PUBLIC NOTICE No. 742.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 30, 1870.

The following is an act approved July 14, 1870, to extend the provisions of the pre-emption laws to the Territory of Colorado, and for other purposes: [Part II., No. 26.]

This act leaves the provisions of law as heretofore respecting "offered lands," viz: filing within *thirty days* and payment within *twelve months after settlement*.

The settler on surveyed "unoffered land" must file his or her declaratory statement within three months from the date of his or her settlement on such land, and, within eighteen months from the expiration of said three months, make the proper proof, and pay for such land.

Where settlers had already filed before the passage of the act, they are required to make proof and payment within one year from such passage; therefore, all filings made prior to that date will expire, by limitation of law, upon unoffered lands, on the 14th of July, 1871.

The settler on "unsurveyed land" must file his or her declaratory statement within three months from the date of the receipt at the district land office of the approved plat of the township embracing the tract upon which he or she has settled, and, within eighteen months

from the expiration of said three months, make the proper proof, and pay for such tract.

The proviso of the act of June 2, 1862, requiring filing within six months from survey in the field, and providing for filing with the Surveyor General, is repealed.

Circular instructions to registers and receivers, giving more specific details, will shortly be issued. In the meantime, those officers will be governed by this notice.

JOS. S. WILSON, *Commissioner*.

No. 352.

SCHAFER v. SCHEIBEL AND STEINBAUER.

Held—That the pendency of a contest between pre-emption claimants does not exclude pre-emption settlement and filing.

They can be made subject to the decision in the contest pending.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, Aug. 14, 1871.

SIR:—I have considered the case of John Schafer v. John Scheibel and Theresa Steinbauer.

The land in controversy is the W. $\frac{1}{4}$, N. W. $\frac{1}{4}$, Sec. 12, T. 125, R. 29, W. St. Cloud Minnesota.

The tract was formerly covered by a homestead entry now cancelled. Before its cancellation two of the claimants in this case, Schafer and Mrs. Steinbauer, settled upon this land. The cancellation was ordered March 7th, 1867. On that day Schafer filed a declaratory statement as a pre-emptor, and Mrs. Steinbauer applied to enter the tract as a homestead. The decision of the commissioner rejecting both the claim and the application, was affirmed by the secretary June 1st, 1868. Pending the appeal before the secretary on the 13th day of January, 1868, Schafer filed another declaratory statement alleging settlement March 7th, 1867.

Scheibel also filed a declaratory statement April 24th, 1868, alleging settlement April 18th, 1868.

On the 15th day of June, 1868, after the decision of the secretary rejecting finally her homestead claim, Mrs. Steinbauer filed a declaratory statement as a pre-emptor, alleging settlement the same day.

The decision of the local officers in favor of Scheibel was overruled by the commissioner, who awarded the tract to Mrs. Steinbauer, on the ground that Scheibel's settlement was made with full knowledge of the adverse claim and pending the contest.

From this decision Scheibel has appealed.

Schafer expressly waives his right to a review.

The pendency of a contest between pre-emption claimants does not operate to exclude pre-emption settlement and filing. Such settlement and filing can be made subject to the decision in the pending controversy.

If the decision should recognize any valid adverse right, then the filing will be entirely inoperative; but if all claims in controversy should be rejected, then such filing would have full force and effect as in

other cases. (See decision of Secretary Cox in *Ralston v. McCandless*, Vol. 12, p. 370 of Land Records.) Both Steinbauer and Scheibel show good faith, and have valuable improvements on the land and the only question now presented is that of priority of pre-emption right.

Scheibel's settlement is alleged and proved to have been made on the 18th day of April, 1868.

Within thirty days from that date and on the 24th of April, 1868, he made his declaratory statement.

Mrs. Steinbauer claimed a homestead right until June 1st, 1868, when it was finally rejected by the secretary. Subsequently, and on the 15th day of June, 1868, she initiated a pre-emption right by filing a declaratory statement, alleging settlement that day. Her settlement as a pre-emptor is therefore subsequent to that of Scheibel. Even if allowed to take advantage of her homestead settlement in proof of the pre-emption claim, she could not ante-date Scheibel's settlement without defeating her claim by showing non-compliance with the provision of law requiring a declaratory statement on offered land to be filed within thirty days of settlement.

I recommend that the decision of the commissioner be reversed, and that Scheibel be allowed to enter the land upon showing a full compliance with all the requirements of the pre-emption law.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by Acting Secretary Cowen, Aug. 20, 1871.

No. 353.

WALKER AND WALKER.

The 5th section of the Act of March 3, 1843, allows a pre-emption claimant to file his declaratory statement after the three months from time of settlement had expired, provided it was done before any one else had initiated a pre-emption right.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., Jan. 10, 1872.

SIR:—I have considered the appeal of E. D. Walker and I. D. Walker from the decision of the Commissioner of the General Land-Office, refusing to permit them to make payment for certain lands, claimed under the pre-emption law, on the ground that more than a year had expired from the time of settlement before their offer was made. It appears that E. D. Walker settled on the S. W. $\frac{1}{4}$; and I. D. Walker on the S. E. $\frac{1}{4}$, Sec. 12, 3 N. 8 E., Mt. Diablo Meridian, California, on the 1st day of April, 1868.

These tracts were offered Feb. 15, 1859, and withdrawn Jan. 31, 1865, for the Western Pacific Railroad, being within its twenty mile limits. They were restored by act of March 6, 1868, 15 Stat., 39.

The parties filed their declaratory statements in time, and on the 6th of June, 1871, made application to prove up and make payment. There are no adverse claims. The only question presented is, were these parties too late in making their application; more than one year having expired from the date of their respective settlements. The 15th Section of the act of 1841, provides that the claimant shall make affida-

vit, proof and payment within twelve months after the date of settlement, "and if he or she shall fail to make such affidavit, proof and payment within the twelve months aforesaid, the tract of land, so settled and improved, shall be subject to the entry of any other purchaser."

An analogous question was determined by the Supreme Court of the United States at its December term, 1871, in the case of *Johnson, et al. v. Towsley*.

The court held that the 5th Section of the act of March 3, 1843, allowed a pre-emption claimant to file his declaratory statement after the three months from time of settlement had expired, provided it was done before any one else had initiated a pre-emption right.

The court said: "The record shows, undoubtedly, that his (Towsley's) settlement commenced about eight months before he filed his declaration, and it must be conceded that the land was of that class which had not been proclaimed for sale, and his case must be governed by the provision of that section. It declares that where the party fails to make the declaration within the three months, his claim is to be forfeited, and the tract awarded to the next settler, in order of time, on the same tract, who shall have given such notice and otherwise complied with the conditions of the law. The words 'shall have given such notice,' presupposes a case where some one has given such notice before the party who has thus neglected seeks to assert his right."

"If no other party has made a settlement or has given notice of such intention, then no one has been injured by the delay beyond three months and if at any time after the three months while the party is still in possession he makes his declaration and this is done before any one else has initiated a right of pre-emption by settlement or declaration, we can see no purpose in forbidding him to make his declaration or in making it void when made, and we think that Congress intended to provide for the protection of the first settler by giving him three months to make his declaration, and for all other settlers by saying if this is not done within three months any one else who has settled on it within that time, or at any time before the first settler makes his declaration shall have the better right."

The 15th section contains no declaration of forfeiture. The 5th does. If the construction put on the 5th section is correct, then, *a fortiori*, the same construction should be put upon the 15th. Applying the principle decided by the Supreme Court to the case under consideration, we find that the offer of payment was made before any other person had initiated an adverse right, and that no one has been injured by the delay and that it seems to have been the intention of Congress to protect the pre-emption settler, even after the expiration of the twelve months, in all cases where no one else will be injured.

I think the decision of the Commissioner should be reversed and so advise.

Very respectfully,

W. H. SMITH, *Asst. Atty. General*.

HON. C. DELANO, *Secretary of Interior*.

Concurred in by the Secretary, January 13, 1872.

No. 354.

ERASTUS KIMBALL.

A pre-emptor who settled prior to withdrawal for railroads may enter his land at the minimum price at any time prior to the initiation of an adverse right by another settler.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Sept. 10, 1874.

SIR:—I have examined the appeal of Erastus Kimball from your decision of May 10, 1873, by which you required him to pay an additional one dollar and a quarter per acre for 160 acres of land in sec. 28, 8 N., 28 E., Walla-Walla district, Washington Territory. Kimball filed his declaratory statement on said land on the 10th of June, 1868. He did not make payment until July 13, 1872. In the meantime the lands had become double minimum by reason of the grant to the Northern Pacific Railroad and the withdrawal made for the benefit of said road on the 13th of August, 1870.

Kimball claims that the lands were unoffered. You held that they were offered, and that, inasmuch as payment was not made for them within the year from settlement, and they had been raised to double minimum, after the expiration of the year, that he should be required to pay double minimum rates.

I am not able to agree with the conclusion you reached. In my opinion it is immaterial whether the lands were offered or unoffered. It is the settled rule of this Department that a settler on offered land does not forfeit his right by non-payment within the year, (in analogy to the case of *Johnson v. Towsly*, 13 Wallace, 72,) provided he does pay before another person makes an entry. The statute declares that upon such failure "the tract of land so settled and improved shall be subject to the entry of any other purchaser."

I do not think that the raising of the land to double minimum should be regarded as equivalent to an entry, and therefore reverse your decision, and herewith return the papers transmitted with your letter of the 19th of May last.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

To the Commissioner of the General Land-Office.

No. 355.

WILLIAM MCHENRY.

A party settled on unsurveyed land. When a certain township was surveyed, a part of his claim was found therein, the balance being in an adjoining unsurveyed township. The settler filed for the portion of his claim which was surveyed, and gave notice that he claimed land in the adjoining unsurveyed township. The time within which by law he was required to prove up his claim was about to expire, and the other township had not been surveyed.

Held—That having given notice that part of his claim was upon the unsurveyed land—after the other township should be surveyed and the plat

thereof returned, the settler would be allowed the usual time within which to file this declaratory statement and prove up and pay for his entire claim.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 15, 1874.

REGISTER AND RECEIVER, *Los Angeles, Cal.*

GENTLEMEN:—I am in receipt of a letter from G. N. Hitchcock, San Diego, California, in which he states in substance that William McHenry has claimed the S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$ 19, 18 S., 1 W., S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, 24, 18 S., 2 W., since January, 1869. That when Tp. 18, S. 2, W., was surveyed, and the plat filed in the local office, he was instructed by you that he could then file his D. S. for the portion in said township, and that when Tp. 18, S. 1, W., was surveyed, he could include the S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, 19, in this filing.

In view of the fact that the claimant's filing for the land in Tp. 18, S. 2, W., is about to expire, and Tp. 18, S. 1, W., has not yet been surveyed, Mr. Hitchcock asks how the claimant is to proceed to secure the latter tract.

The records of this Office show that Tp. 18, S. 2, W., was surveyed between August 23 and 30, 1869. Date of filing of Tp. plat in local office is not known.

McHenry filed D. S. 144, for S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, 24, 18, S. 2, W., April 11, 1870, alleging settlement June 23, 1869.

If, as stated, Mr. McHenry gave notice when he filed his D. S., for the portion of his claim surveyed that he claimed and would file for the land then unsurveyed as soon as the same should become subject to filing, he should be allowed to perfect his claim for the whole, on showing a full compliance with the law as to settlement and cultivation.

Inasmuch as parties are allowed to settle on unsurveyed land, and as they are required to file their D. S. within three months after the filing of the Tp. plat in the local office, it would be unjust to compel them to prove up and pay for one-half of their claim, thus exhausting their pre-emption right at the expense, as in this case, of the most valuable portion of the land.

Mr. McHenry very properly filed his D. S. for the land in Tp. 18, S. 2, W. The filing is simply a notice of a claim, and as he gave notice at the time of his filing that he claimed land in Tp. 18, S. 1, W., he should be allowed the usual time after the filing of the Tp. plat for Tp. 18, S. 1, W., in the local office, within which to file his D. S. and prove up and pay for his entire claim.

Such are the instructions in this case.

Respectfully,

W. W. CURTIS, *Acting Commissioner.*

No. 356.

P. A. ROUNDTREE.

A pre-emption settler on unsurveyed lands is not bound to file his declaratory statement until after an approved survey has been made, which shall enable him to describe the land claimed by proper legal subdivisions. Where part only of his claim has been surveyed, he is not bound to file

until after the entire tract claimed has been surveyed and plat thereof returned to the local office.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 16, 1874.

REGISTER AND RECEIVER, *Olympia, Washington Territory.*

GENTLEMEN:—Yours of the 15th ultimo, reporting rejection of the claim of P. A. Roundtree to file his declaratory statement for lots 4, 5, and 6 of sec. 1; and lot 1, and S. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, 2, 12 N., 4 W. is received.

It appears that the plat of survey of the township was filed Feb. 4, 1874, according to your report, though the plat on file here is indorsed as showing such filing Feb. 2, per receipt of register.

Sec. 1 was at that time covered in part by a donation claim unsurveyed, which formed the eastern boundary of the claim of Mr. Roundtree. A survey of this claim was completed and an amended plat filed March 26, 1874, showing the legal survey and subdivision of the tracts claimed by the pre-emptor.

He applied to file May 15, within three months from the date of filing the amended plat. You rejected his claim because he did not file within three months from the filing of the regular township plat, holding that the withdrawal for the Northern Pacific railroad excluded his claim for the odd section, and that he must take the portion in the even section, at \$2.50 per acre.

The law requires the pre-emptor to describe the lands embraced in his settlement claim, and to declare his intention to enter the same under the provisions of the pre-emption act. This he must do, if he settled before survey, within three months from the filing of the approved plat of the township embracing such pre-emption settlement.

The first plat filed in your office did not contain an approved survey which would enable Mr. Roundtree to comply with the law by describing his claim. He cannot, therefore, be prejudiced by a requirement with whose provisions he cannot comply, but is entitled to a survey which shall bound the tract claimed by him by legal subdivisions, disclose to his knowledge its official area, and make it possible for him to file his declaratory statement in the exact manner prescribed by the statute. Any other survey cannot furnish a complete approved plat by which his rights can be adjusted. As he knew of this donation claim, and its segregation was in progress, marking clearly his boundaries, he was entitled to the statutory period after it should be filed to present his declaratory statement, and you are directed to admit it accordingly—his settlement in 1869 being long prior to the withdrawal for railroad purposes.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 357.

CONROY v. PHILLIPS.

Where a pre-emptor tenders his declaratory statement for a tract of land before another pre-emptor has fully completed his entry, by making payment for the same tract, the declaratory statement should be received and the parties allowed a regular hearing before the local officers. The cancellation of a filing upon *ex parte* affidavits is error.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., July 15, 1874.

SIR:—I have examined the case of James Conroy v. James Phil-

lips, pre-emption claimants, involving title to the N. E. $\frac{1}{4}$, Sec. 30, 1 S., 2 E., San Francisco, California, on appeal from your decision of October 9, 1873.

It appears from the record before me that upon the same day on which Conroy appeared to prove up and pay for the land, but before he had actually paid the consideration money or tendered the same, Phillips appeared and offered to file as a pre-emptor, supporting his application by two affidavits attacking the good faith of Conroy. The local officers received the filing, and Conroy appealed to your Office. He also thereupon offered certain other proof, refuting the allegations of the affidavits referred to. It seems, however, that the proof on both sides was *ex parte*. Upon all the affidavits presented you ordered the cancellation of Phillips' filing, and he has appealed to the Department.

I think you erred.

Phillips' filing was made before an entry by Conroy, and he is entitled to a regular hearing before the local officers.

I therefore reverse your decision, and return the papers transmitted with your letter of March 11, 1874, with the direction that a hearing be ordered upon due notice to both parties.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

To the Commissioner of the General Land-Office.

No. 358.

BROWN v. WHITE.

A party whose application to file a declaratory statement is rejected has a right to appeal. His failure to do so will conclude any right he may have had to the land claimed at the time of such refusal.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Feb. 28, 1873.

REGISTER AND RECEIVER, *Lincoln, Nebraska.*

GENTLEMEN:—The register's letter of the 18th inst., enclosing affidavits in support of the application of George W. Brown for a rehearing in the matter of the contest between himself and James H. White, has been received.

This case was decided on the 15th ult. by rejecting the pre-emption claim of Brown to S. $\frac{1}{2}$ N.W. $\frac{1}{4}$, and N. $\frac{1}{2}$ S.W. $\frac{1}{4}$, sec. 15, T. 9 N., R. 6 E., for the reason that he did not file in the required time after his actual settlement, and also that he was not a qualified pre-emptor, being the owner of 320 acres in the State of Missouri. The homestead entry No. 7800, of James H. White, covering the said tracts, was held intact, and sixty days allowed for appeal.

In this case the application of Brown to file on said land, he now alleges, was rejected by the register Dec. 12, 1870, who held that the tracts in question reverted to the Burlington and Missouri River Railroad, upon the cancellation of the homestead entry No. 472, of John H. Kanons, January 3, 1870. Mr. Brown acquiesced in this ruling of the local office, and did not appeal therefrom to this office. Said applicant did not again apply to file until May 13, 1871, three days after the homestead entry of White.

He now alleges: 1st, that he settled Dec. 31, 1870, having laid the foundation of a house Dec. 12, 1870, and applied then to file, and that

his application was refused; 2d, that he is not the owner of 320 acres of land, and never has been; 3d, that Mr. White was not a *bona fide* resident for more than one year from the date of his homestead entry.

The first allegation is of no value. He had a right of appeal from the refusal of the local officer's decision rejecting his filing December 12, 1870. His failure to appeal concluded any right he might otherwise have had at that time. At the expiration of three months from his settlement, he not having applied and having no filing on record, his claim was forfeited, (see sec. 5, act 3d March, 1843,) and the tract subject to the legal initiation of a claim by any other qualified party.

His second point was in controversy at a former hearing, and he had then opportunity to disprove it. No good reason is shown why he did not then submit the evidence he wishes to put in now, and even if he is able to show that he is not and has not been the owner of 320 acres of land, it will avail him nothing, as his claim would be rejected for the reason last above named.

His third allegation sets forth that White was not a *bona fide* resident on the land in contest for more than one year from the date of his homestead entry. This is also a matter which he had opportunity at the former trial to establish; and while it may form the basis of a future controversy, if it occurred subsequent to the original trial, it cannot be deemed a proper reason to justify a rehearing of the case.

This Office therefore rejects the application for rehearing, and you will advise the parties accordingly.

Respectfully,

WILLIS DRUMMOND, *Commissioner*.

Affirmed by Secretary of Interior, July 22, 1874.

No. 359.

EVENS DEN v. GALPIN.

Plaintiff, whose homestead entry had been cancelled, afterwards and before any adverse claim, appeared at the Land Office with his application as a pre-emptor and requested that it be filed. The local officer refused to receive it.

Held—That having done what he did he was in a better condition than one who subsequently made an entry of the land, and that he should not suffer by the neglect of the officer to receive the application.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, July 6th, 1871.

SIR:—I have considered the case of Ole. Evensden v. Benjamin D. Galpin.

Land in controversy W. $\frac{1}{2}$ of N. E. $\frac{1}{4}$, Section 32, T, 104, R, 26, Jackson, Minn.

Evensden entered the land as a homestead January 12th, 1868. On proof of abandonment his entry was cancelled July 28th, 1869.

Galpin entered the tract as a homestead October 12th, 1869. Shortly afterwards Evensden filed affidavits by himself, Farje Evensden and Ole Evensden, Jr., alleging that he settled upon the land in June 1868; that he had made valuable improvements on the same, and that he had resided on the tract continuously from the time of his settlement up to the date of affidavits. In his own affidavit he stated that he did not

receive any official notice whatever that a trial had been demanded by Galpin or any one else with reference to the land; that he was informed by several of his neighbors that such a trial had been ordered, and that he then appeared at the land office with his witnesses; that he is a Norwegian by birth and unacquainted with the English language.

In another affidavit dated October 25, 1869, he alleged that after the cancellation of his homestead entry on the 28th day of September, 1869, he went to the land office at Jackson and offered to file a declaratory statement on the land as a pre-emptor, that the receiver refused to receive it, that the register was not at home, that he remained at Jackson until October 2d, 1869, when the register returned, that he offered the declaratory statement to him and he also refused it. He alleged also that at that time the register and receiver told him the land was vacant.

In view of the representations made in the affidavits the Commissioner ordered an investigation of the case which was had at the local office at Jackson, May 20, 1870. The decision of the local officers affirmed by the Commissioner was adverse to Evensden and sustained the homestead entry of Galpin. Evensden now appeals. By the testimony taken at the examination it appears that Evensden is an unmarried man, a Norwegian by birth and unacquainted with the English language, his own evidence in the case being taken through an interpreter. He entered the tract in controversy as a homestead January 12, 1868. About the 1st of July following he built a shanty on the land, a sod house with roof of rafters, hay and sod. He lived in this house during the summer of 1868, and broke about ten acres of ground. This ground at the time of the investigation he had in crops.

From the summer of 1868 down to the time of investigation he appears to have worked off the claim from time to time for different persons returning to his house between the intervals of work. His house was not suitable for a dwelling in winter and he appears not to have occupied it for any length of time during the winter months. In the Spring of 1869 he repaired the house. He had in it at the time a bedstead, table, dishes, stove, benches and cooking utensils. He swears that since his first settlement when not at work the tract has been his only home. His own testimony is substantially corroborated by that of his brother and one other witness and it is not materially affected by that of the adverse witnesses. Evensden swears that on or about the first of October, 1869, he made an application to the land office to file on the land as a pre-emptor which was refused.

Galpin made some improvements on the land in 1869, and in March, 1870, he had a house on the tract. He has occupied the same very much as Evensden has, going off to work and returning at intervals.

The evidence of residence furnished on the second examination was I think sufficient to sustain the original entry, had it been given at the proper time. But as no appeal was taken from the decision of the Commissioner cancelling the entry such cancellation must be considered as final.

After the cancellation of Evensden's Homestead entry the land again become subject to pre-emption and homestead filings. No effort was made to initiate a right of either kind until the 28th day of September, 1869, when Evensden appeared at the local office and offered to file a declaratory statement on the land as a pre-emptor. This he testifies at the examination and his testimony and affidavits on this point are supported by the affidavit of his attorney, Charen Brown, filed in the De-

partment January 26th, 1871. There is no denial of this fact in any of the papers in the case except in the letter of the Register and Receiver to the Commissioner dated December 10, 1869. The attorney swears that the application was made out in due form and signed by Evensden; that he (Brown) presented it and the Receiver declined to receive it, but admitted that Galpin had then made no entry of the land.

There can hardly be any doubt that such application was made and refused. It was the duty of the local officers to have accepted and filed the declaratory statement offered, and I do not think their refusal to do so prejudices the right of Evensden, especially in favor of a *subsequent* homestead claimant.

Evensden shows, I think, good faith in his homestead settlement and his proof if properly produced at the time would have been sufficient to have supported his entry. His right to file as a pre-emptor was not defeated by the cancellation of his homestead entry and in the absence of adverse claims he certainly should have been allowed to enter the tract as a pre-emptor.

I, therefore, recommend that the decision of the Commissioner be reversed, that the homestead entry of Galpin be cancelled and that Evensden be allowed to file on the land as a pre-emptor.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by Acting Secretary Cowen, July 8, 1871.

CIRCULAR.

No. 360.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 31, 1873.

REGISTERS AND RECEIVERS.

GENTLEMEN:—Your attention is hereby called to the following act of Congress, approved March 3, 1873, and entitled "An act authorizing joint entry by pre-emption settlers, and for other purposes." [Part II., No. 95.]

Concerning your duties in the administration of the aforesaid act I have to advise you as follows, to wit:

When the survey in the field finds two or more settlers with improvements on the same legal subdivision, a joint entry thereof will be allowed as heretofore.

If they so elect, however, they may contract by and between themselves *only*, that one of them may file for and enter the whole of such tract, and, after a patent is issued therefor to him, convey to the others their portion of said land.

Under the last-named provision it is necessary that the said contract be made *first*, and that the filing and entry shall both be made in pursuance thereof.

This contract must be made in writing, signed by all parties thereto, attested by two disinterested witnesses, and acknowledged before some officer authorized to take acknowledgments of deeds within and for the State where the land is situated. The character and authority of the

officer must be verified by the seal of a court of record. You will make no reference to the contract until the party seeks to make actual entry, when you will require the original paper, or, if the same has been placed upon the records of the county, a duly certified copy thereof under seal will be sufficient.

You will require such proof of occupation by settlement, residence, and improvement, by each and every party to said contract, as would be sufficient under the former practice to justify a joint entry. Their good faith and compliance with law must be fully proven.

The proviso to section one is held to mean that not more than one hundred and sixty acres or a technical quarter section, as allowed under the pre-emption laws, shall be included in any one entry. An inconsiderable excess, when the tract is bounded by regular quarter-section lines, will be permitted.

The act does not specify *what* improvements a settler must have on a legal subdivision, partly occupied by another, to entitle him to a joint entry. It is held, however, that each must have improvements of value, and not merely of a nominal character or extent, to warrant a proceeding under this act.

The pre-emption affidavit as written on page seventeen (17) in Circular of August 30, 1872, will be amended, in cases where entry is made under this act, by inserting after the word "whomsoever," in the ninth (9th) line, the words "save under the act of March 3, 1873, and as specified in the contract herewith submitted in pursuance thereof."

You will in each case forward, with the entry papers, to this Office said original contract, or the certified copy from record as aforesaid.

You will perceive that the act refers only to pre-emptors on agricultural lands; and the word "homestead" in the last line of the proviso to the first section is used only in a descriptive sense. You will also observe that where either or any of the parties settle *after* survey, no joint entry or proceeding under this act can be had.

Respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 361.

(C) RESIDENCE AND IMPROVEMENTS.

HEIRS OF MURDOCK v. GRANT.

This case presents a question of fact as to the sufficiency of settlement and residence by Grant, and of his having abandoned his own land in order to settle on the claim.

Held—That his settlement was sufficient, and that he had sold his own land in good faith, and that such a sale did not deprive him of the benefits of the pre-emption act.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., July 3d, 1871.

SIR:—I have considered the case of heirs of Matthew Murdock v. Samuel D. Grant.

Land in controversy, Lot 4 and N. E. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Section 34, T. 119, R. 27, Litchfield, Minnesota.

The tract in controversy was once entered as a homestead under the

act of 1862 by Murdock, whose entry was cancelled for abandonment September 21, 1866.

Grant filed declaratory statement on the land under the general pre-emption laws, Nov. 1, 1866.

On the 9th of October, 1867, he made proof and payment. The entry was temporarily suspended, but finally passed for patenting February 25, 1868. The records of the General Land-Office (Vol. 7, p. 49, Greenleaf Land Office, Minn.), show that a patent has been issued to Grant for the land in controversy.

A pencil mark on the top of the page states that the patent was withdrawn.

After the entry had been passed for patenting, Murdock's heirs filed affidavits alleging bad faith on the part of Grant. The commissioners ordered an investigation. Decision of local officers in favor of Grant was affirmed by the commissioner.

Heirs of Murdock appeal.

The claim of Grant is attacked on account of two alleged defects. 1st. Want of good faith in cultivation and settlement. 2d. Abandonment of his own land in order to settle on the claim.

The evidence bearing on the first point shows that Grant's declaratory statement was filed November 1, 1866. There were no conflicting claims, the homestead entry having been cancelled. In January, 1867, he commenced to improve the land. In April, with hired help, he built a log house as good as a majority of those built on pre-emption claims. He moved into the house about the first of May, 1867, with his family, consisting of a wife and four children. They resided on the tract until December following. In October of that year, as before stated, he proved up and paid for the land. Grant is a physician, and had a practice extending over a circuit of many miles.

He held the position of postmaster at Minnesota, a small place within a few miles of the claim, the duties of the office being performed by a member of his family or by his sister-in-law, Mrs. Jacobs.

Grant was absent from the claim a good deal during the summer of 1867, but appears to have been engaged entirely in the practice of his profession and he appears also to have had no residence except that on the tract with his family. He swears that he made the tract his "exclusive residence," and also that he made it his "headquarters for business."

His family only left the tract once during the summer when his wife for two or three days went to visit her sister. It is not shown whether there was an occupancy of the land after December, 1867. With reference to the second point the evidence shows that before Grant pre-empted the land in controversy he was the owner of another tract. The abstract of title shows that this tract was deeded to him in 1855 and 1856; and that he deeded it to his sister-in-law, Mrs. Jacobs, January 18th, 1869, the consideration of the sale being \$1,000.

Parol evidence of Grant corroborated by the deposition of Mr. Jacobs now a resident of Philadelphia, Pa., shows that in January, 1866, Grant made a verbal contract with Mrs. Jacobs to sell her the land for \$1,000.

A few months later she paid him \$50, when he executed a bond for a deed.

This bond was not recorded. In January, 1869, the balance of the consideration being paid he executed the warrantee deed and it was re-

corded. Mrs. Jacobs began to reside on the land in 1866; in the summer of that year it was cultivated by her son and she received the profits. In 1867 one Pope farmed the land and she received the profits. In 1868 one Krauns farmed the land and she received the profits. Pope, in 1867, rented the land from Grant.

Grant swears he acted as the agent of Mrs. Jacobs and he then did and does now all her business for her. He also swears that at the time he settled his pre-emption claims he considered that he owned no other land.

I think there can be no doubt of the good faith of Grant. He had an actual residence on the land from May, 1867, down to the time of proving up and there is no adverse claim that can in any case be recognized. The testimony shows also that he did not "quit or abandon his own land."

The legal title to the land which he claims to have sold remained in him at the time he made his pre-emption settlement but he did not "quit or abandon it" to go upon the land in controversy. He made a contract for its sale and afterwards completed the sale by executing a warrantee deed. I do not think under these circumstances he can be said to have abandoned the land to take up the claim. A former ownership is no disability if terminated by sale before pre-emption. (Lester, 420, Nalse v. Lawson.)

I am of opinion that the decision of the Commissioner should be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by Acting Secretary Cowen, July 6, 1871.

No. 362.

WRIGHT v. WOODS.

Four men built a house 32 feet square and two stories high in the centre of a section, in such a way that 16 feet square stood on each quarter. Each occupied the part standing on his own quarter, and each improved and cultivated his own quarter. Wright bought out one of these parties, paid for same \$800, made settlement and filed on the quarter. His good faith as a pre-emptor was shown. He was a single man and boarded with a family in the house, but occupied a portion of his share of the building.

Held—That this building was his dwelling and that he was entitled to pre-empt the quarter.

Cites—Lindsey v. Hawes, 2 Black., 554. Silver v. Ladd, 7 Wall., 225.

DEPARTMENT OF THE INTERIOR,

Washington, D. C.,

June 18th, 1873.

SIR:—I have considered the case of John W. Wright v. Frank R. Woods, appealed from your decision of February 27th, 1873. Woods on the 21st of November, 1871, filed his D. S. on the S. E. $\frac{1}{4}$, Sec. 2, Tp. 8, R. 16 W., Grand Island District, Nebraska, alleging settlement on the 17th of November. Wright, on the 18th of July, 1871, entered the same as a soldier's homestead, under the act of July 15th, 1870, and on the 20th of April, 1872, instituted proceedings in the local office to contest the validity of Wood's filing.

The testimony shows that one H. I. Hungerford had, on the 14th of

April, 1871, filed D. S. on this tract, alleging settlement on the 12th of April, 1871, and that he, in connection with other persons, who claimed the remaining quarters of said section 2, had built a house thirty-two feet square, and two stories high, on the centre of said section in such a manner that one-fourth of said building stood on each of said quarter sections. The portion of said house standing on said S. E. $\frac{1}{4}$ was sixteen feet square and two stories high. Hungerford having broken and otherwise improved at least twelve acres of said land, sold and transferred his interest in the same to the said Woods, for the sum of eight hundred dollars, who after such purchase, settled upon and resided on the same from the 17th of November, 1871, to date of hearing.

As soon as spring opened, Woods commenced improving and cultivating the premises. It is evident from the entire testimony that he acted in good faith and intended to make said tract his place of residence, and to comply with all the provisions of the pre-emption law. It is objected that his occupation of a portion of the building, in the manner above-stated, was not a legal residence on said land. He was a single man and so were the others who claimed the balance of the section, and who have received patents therefor. These persons each occupied portions of their respective premises and allowed a man by the name of Collins to board them, and occupy the balance of the premises not needed by them, without payment of any rent, other than the boarding and occupation above-described.

I think the facts show a legal residence by Woods, on the premises. His portion of the building was more extensive than the entire buildings of a majority of pre-emption settlers. It must be conceded that if each of these four settlers had built separate houses, sixteen feet square, and two stories high, and located them just as this building was located it would have been in compliance with the law. Does it make any difference, in principle, that the four houses were under one roof, and were so constructed as to allow ingress and egress from one to the other? Was the building intended for and used as a dwelling for the applicants? If it were, and if it were also a suitable building to be used for that purpose, then the law was complied with. See *Lindsey, et. al. v. Hawes et. al.*, (2 Black., 554,) the Supreme Court of the United States held that "where the house of a pre-emptor is built on the line dividing two quarter sections, his residence in it avails as the foundation of a pre-emption right in either," and that, too, although the greater portion of the building was on the quarter section not pre-empted. Justice Miller in delivering the opinion of the court used the following language: "This is a question arising under the Government of the United States, and concerns a construction of one of its most benevolent statutes made for the benefit of its own citizens, inviting and encouraging them to settle upon its public lands. The Government which made the law owned both quarter sections and was indifferent as to which should be sold to Lindsey, provided it was legally done. Lindsey's house was on both quarter sections. So far as mere personal residence is concerned we think he may correctly be said to have resided on both sections."

The case of *Silver v. Ladd* (7 Wall., 219) was one under the Oregon Donation Act. Elizabeth Thomas, an aged widow, went with her son, an unmarried man, to Oregon Territory and settled there. They lived in the same house. It stood upon the line dividing two parcels of land, the line running through the centre of the building. Cultivation was

made on both tracts, one being claimed by the mother, the other by the son. A *donation certificate* was issued to the mother for the tract she claimed and one to the son for the tract he claimed. The mother died, and the United States sold the land claimed by her and patented it to third parties. Upon this state of facts, the Court held that the title of Mrs. Thomas was good, and thereby also that the title of the son was good. They said, "In reference to the question of actual settlement and residence on the land, we have only to refer to the case of *Lindsey v. Hawes* (2 Black, 554) where this precise question is raised, and where it is said that a person residing in a house which is bisected by the line dividing two quarter sections will be held to reside on both and consequently on either of them to which he may assert a claim."

I adopt and apply the liberal principles of construction announced in these cases, and hold them decisive of the principle involved in the present. Wright made his entry after Woods had made his settlement and with a full knowledge of all the facts, and he cannot complain that he has been taken by surprise. I reverse your decision and award the land in controversy to Woods, and herewith return the papers transmitted with your letter of the 16th instant.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

(D) PROOF AND PAYMENT.

No. 363.

CIRCULAR.

TREATMENT OF PRE-EMPTION CLAIMS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., December 30, 1870.

GENTLEMEN:—In view of the act of Congress approved July 14, 1870, (Part II., No. 26,) limiting the time within which payment must be made in pre-emption cases, the following rules are prescribed for your guidance:

1st. You will admit all filings for *offered* lands presented within thirty days after alleged settlement where the land has not been disposed of prior to such alleged date of settlement—provided the applicant is not disqualified by a previous filing, and in other respects has the right under the pre-emption law.

2d. Where the tract is subject to "*ordinary private entry*" the pre-emption filing is no bar to the *conditional* entry of the land, either by cash, homestead, or other legally authorized disposal—it being understood that any such disposal, according to long established practice, will be *subject to the right of the pre-emptor to prove up and consummate his entry within the twelve months allowed by law*, without being compelled to give further notice to other parties, who at the time of such entry had notice of the existence of a prior-alleged pre-emption claim.

3d. Where the land has once been *offered* and afterwards withdrawn

from private entry, making public notice of at least thirty days under direction of this office necessary to its restoration to ordinary private entry, and where such land has not been withdrawn from homestead or pre-emption entry, you will pursue the course indicated in the 2d rule, so far as homestead and pre-emption entries are concerned—filing within thirty days, and proof and payment within twelve months, being required for pre-emption claims on this class of lands.

4th. Upon surveyed “unoffered lands” not withdrawn from pre-emption, you will also admit all filings properly offered within three months after alleged settlement, or within three months after the filing of the township plat of survey in your office. You will then hold the tract subject to pre-emption or homestead entry, or to any selection authorized by law, without requiring proof of the abandonment of prior filings—the disposal being always understood to be subject to the right of the pre-emptor to prove up and pay for his claim within the twenty-one months after settlement or the filing of the township plat, as the case may be.

5th. The foregoing will not be construed to prevent any party who may desire a speedy adjustment of his claim, from bringing contest against adverse claimants, upon affidavit, as heretofore; and when proper affidavit shall be filed with you, and suitable provision made for the expenses of contest, you will, *without waiting for reference to this office*, duly notify all the parties whose claims appear on your records, and hold the usual investigation, at the expense of the party bringing the contest. At the close of the hearing you will report to this office all the papers, with copies of the preliminary affidavit, notices and proof of service, personal if practicable, otherwise, by such publication, at the expense of the parties, as will be deemed legal notice in land cases in the State or Territory, under the laws and the practice of the courts; your report to be accompanied with your joint opinion and decision.

6th. You will treat all filings upon lands which have once been “offered” as abandoned after the lapse of twelve months from the alleged settlement, which is the statutory limitation, and all filings upon “unoffered lands” as abandoned after the lapse of twenty-one months after such alleged settlement or the filing of the township plat, unless within the period fixed by law proof and payment shall have been made, or legal tender of such proof and payment shall have been made and refused; of which tender and refusal you will take care to make proper endorsement in each case.

7th. This office will duly examine all entries, and, where adverse filings appear, will hold them suspended until the legal expiration of the adverse claims; and when two or more entries are found to conflict, will dispose of them according to merit, ordering investigation when necessary to a determination of the respective rights of the parties.

8th. The pendency of contest between alleged pre-emptors who have merely filed for a tract, and who have not made actual entries, does not withdraw the land from market; but any right acquired by third parties subsequent to the initiation of contest, will be regarded as subject to the right of the contesting parties, and liable to be defeated by an award to either contestant of the tract claimed. This rule is issued in accordance with a decision of the department proper, dated October 22, 1870.

9th. After notice of restoration to private entry, and before the date fixed for such restoration by published notice, no settlement or other

act, subsequent to such notice, can give any preference right to lands embraced in such notice; but the order of the Commissioner is imperative in its nature, and operates as a withdrawal from pre-emption, homestead or other disposal, except in accordance with the terms of the published notice. The land must in such case be restored; and, if there is competition, must be sold to the highest bidder, according to law. The same effect is given to a proclamation for public sale, from the date of its receipt and promulgation by the district officers.

10th. After decision by this office, you will in all cases allow the parties sixty days from service of notice, within which to appeal to the honorable Secretary of the Interior; and, at the expiration of that period, report promptly the action had pursuant to such notice.

Careful attention to the foregoing will save much unnecessary correspondence and litigation, and greatly simplify the treatment of pre-emption claims; and you will please conform your action hereafter to the rules herein prescribed, referring to this office, as heretofore, in exceptional and doubtful cases.

Respectfully,

JOS. S. WILSON, *Commissioner.*

REGISTER AND RECEIVER.

Approved: C. DELANO, Secretary of the Interior.

No. 364.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 5th, 1871.

The following is an act approved July 14, 1870, to extend the provisions of the pre-emption laws to the Territory of Colorado, and for other purposes: [Part II., No. 26.]

This act has been amended as follows: [Part II., No. 41.]

These statutes leave the provisions of the law as heretofore respecting "offered lands," viz: filing within thirty days, and payment within twelve months after settlement.

The settler on surveyed "unoffered land" must file his or her declaratory statement within three months from the date of his or her settlement on such land, and, within thirty months from the expiration of said three months, make the proper proof, and pay for such land.

Where settlers had already filed before the passage of the act, they are required to make proof and payment within two years from such passage; therefore, all filings made prior to that date will expire, by limitation of law, upon unoffered lands, on the 14th of July, 1872.

The settler on "unsurveyed land" must file his or her declaratory statement within three months from the date of the receipt, at the district land office, of the approved plat of the township embracing the tract upon which he or she has settled, and, within thirty months from the expiration of said three months, make the proper proof, and pay for such tract.

The proviso of the act of June 2, 1862, requiring filing within six

months from survey in the field, and providing for filing with the Surveyor General, is repealed.

The restriction as to construction of the act of March 27, 1854, is called to your especial attention.

In cases governed by these provisions you will please conform your action thereto.

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER.

Under date of July 20, 1872, this circular was reissued with the following additions:

By act of March 22, 1872, all filings in the State of California which would, under previous laws, expire prior to March 22, 1873, are held good until that date, both for offered and unoffered lands.

By act of May 9, 1872, all filings, both for offered and unoffered lands, in the States of Minnesota, Wisconsin and Michigan, and the Territory of Dakota, where settlement was made prior to its passage, are held good for one year from the time when they would expire under previous laws.

In other States and Territories the general provisions of this circular will apply. It will be observed that all filings for unoffered lands where settlement was made prior to April 14, 1870, expired on the 14th instant by operation of the act and joint resolution above quoted, except in the States and Territory covered by acts of March 22 and May 9, 1872, above referred to.

See No. 367 and Part II., Nos. 48, 55.

No. 365.

C. G. SHAW.

Shaw claimed to enter 195 acres.

Held—That he could only enter 160, or a quarter section. Cites 2 Stat., 313; 2 Opinions of Attorney General, 563, 578; 3 Do., 113.

Definition of the term "quarter section."

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
WASHINGTON, July 11, 1871.

SIR:—I have considered the case of Calvin G. Shaw, Pre-emption claim, covering S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, 35, 94, 53, and E. $\frac{1}{4}$ Lots 1 and 2 of N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$, of S. W. $\frac{1}{4}$, and W. $\frac{1}{4}$, Lot 1 of N. E. $\frac{1}{4}$, 2, 93, 53, Dakota Territory.

Shaw filed a declaratory statement on this tract, May 6, 1867.

September 25, 1869, he proved up, paid for the land and took his duplicate receipt. The Commissioner, however, refused to confirm the entry on the ground that the filing covered tracts in all amounting to one hundred and ninety-five and eighty-six one-hundredths acres of land, and that the pre-emption act only allows the entry of one hundred and sixty acres, or a technical quarter section.

Shaw was informed by letter to the Register and Receiver, dated June 15, 1870, that he would be allowed to select which of the legal subdivisions he would omit from his entry so as to include his principal improvements, preserve the contiguity of the land remaining, and approximate to one hundred and sixty acres.

From this decision Shaw appeals.

The pre-emption act of 1841 gives a settler the right to enter "any number of acres not exceeding one hundred and sixty, or a quarter section of land."

A "quarter section" means a tract of land containing by intendment one hundred and sixty acres, not the amount of one hundred and sixty acres in a particular form. It is the technical term used to designate a certain legal subdivision of the public land ascertained by official survey under the laws of Congress (2 Stat., 313, Attorney General's Opinion II., page 563; II., p. 578, and III., 114. Rules and Regulations G. L. O., Pub. Ld. Laws, p. 543.)

It may and generally does contain just one hundred and sixty acres of land, but through the unavoidable inaccuracy of surveys in adjusting meridians, etc., it often exceeds or falls below that amount. It is still, however, the technical legal quarter section defined by law and ascertained by official survey.

The pre-emption settler has the right under the Act of 1841 to enter either one hundred and sixty acres in legal subdivisions lying contiguous to each other without reference to the quarter section lines, or he has the right to enter a quarter section as such, in which case he can take the amount of land contained therein as shown by the official survey. In entering a "quarter section," he cannot, of course, depart from the ascertained lines, but must take one hundred and sixty acres or less, as the case may be.

In the case under consideration, Shaw claims by legal subdivision, but not according to the lines of a quarter section. Part of the land is in one township, in Sec. 2, and part in another township, in Sec. 35. He should be allowed to enter any number of the legal subdivisions contiguous to each other and including his dwelling so that the whole shall not in amount exceed one hundred and sixty acres, but he cannot under the act take more than that amount because the land claimed does not constitute what is legally known as a "quarter section."

I, therefore, recommend that the decision of the Commissioner be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by Acting Secretary Cowen, July 12, 1871.

[NOTE.—The practice of the General Land-Office on this point may be stated as follows: "That in cases of an excess where the tract is not a technical quarter section the entry must approximate to 160 acres. In cases where the excess is small and the subtraction of a subdivision would force the claimant to lose an area below 160 acres, greater than the excess applied for, the entry on equitable grounds, is usually allowed."]

Commissioner's letter to Register and Receiver at Fargo, D. T., July 1, 1875.

No. 366.

DANIEL A. MALONE.

A pre-emptor may pay for part of his claim.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 13, 1874.

REGISTER AND RECEIVER, *Oregon City, Oregon.*

GENTLEMEN:—Your favor of the 23d ultimo forwarding the application of Daniel A. Malone to enter the E. $\frac{1}{4}$, S. E. $\frac{1}{4}$, 11, and N. W. $\frac{1}{4}$, S. W. $\frac{1}{4}$, 12, 2, 12, rejected by you for the reason that he filed for 160 acres but is only desirous to enter 120 acres, has been received.

You state that Mr. Malone is pecuniarily unable to pay for his entire claim.

I see no reason why this application should not be granted, and you will therefore notify Mr. Malone that he may come forward and offer his proof for that portion he desires to enter.

Very respectfully,
S. S. BURDETT, *Commissioner.*

No. 367.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 25, 1872.

GENTLEMEN:—The following is an "act to extend the time for the payment for their lands by persons holding pre-emptions on the public lands," &c., approved May 9, 1872. [Part II., No. 55.]

Under this enactment, all filings, where settlement was made prior to its approval, whether upon *offered* or *unoffered* lands, are held good and extended one year from the time when they would expire under previous laws.

In receiving final proof and payment you will be governed accordingly.

Very respectfully,
WILLIS DRUMMOND, *Commissioner.*

REGISTER AND RECEIVER.

No. 368.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 10, 1874.

GENTLEMEN:—Inclosed herewith find copy of an act approved June 3, 1874, entitled "An Act to extend the time to pre-emptors on the public lands in the State of Minnesota to make final payment." [Part II., No. 110.]

This applies to pre-emptors on offered and unoffered lands, including Fort Ridgely and Sioux Indian reservations. It does not apply to any pre-emptors save those whose claims were initiated on or before June 3, 1874, and whose period for proof and payment had not expired prior to that date. To such it gives two years additional to the time allowed

by other laws for proof and payment. You will give it effect accordingly. Please acknowledge receipt.

Respectfully,

S. S. BURDETT, *Commissioner*.

REGISTER AND RECEIVER, *Minnesota*.

(E) SALE AND FORFEITURE.

No. 369.

WEBSTER v. SUTHERLAND.

Held—That a written contract for the sale of growing trees, which the purchaser was to cut and remove as soon as the vender obtained a patent, was such a contract as is inhibited by the 13th section of the act of Sept. 4, 1841.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., October 19, 1872.

SIR:—I have considered the contested pre-emption case of Daniel Webster v. Martha J. Sutherland, involving the right to the N. E. $\frac{1}{4}$, Sec. 13, T. 18, S. R. 14, E. Topeka, Kansas.

Webster's claim has priority, is entirely regular and must succeed unless he is disqualified under the 13th section of the act of September 4th, 1841, by reason of his having contracted in writing to sell the timber on three acres of the land, the purchaser to take and remove the same as soon as Webster obtains the patent.

The said 13th section requires the pre-emptor before he shall be entitled to his patent to take an oath that "he has not directly or indirectly, made an agreement or contract, with any person or persons, whatsoever by which the title which he might acquire from the Government of the United States, should inure in whole or *in part*, to the benefit of any person except himself or herself."

Is the growing timber, unsevered from the land, and which the purchaser is himself to cut and remove, an interest in the land? If it is, then a contract by which such growing timber is sold, is a contract by which "title" may "inure to the benefit" of such purchaser.

In my opinion such timber is a part of the realty, and a contract for its sale is such a contract as is inhibited by the 13th section. *Teakle v. Jacob*, 33 Penn. Stats. 376. *Green v. Armstrong*, 1 Druio, 550. *Bishop v. Bishop*, 1 Kernan, 123. *Buck v. Pickwell*, 1 Williams (vol.) 157. *Putney v. Dey*, 6 N. H. 431.

I reverse your decision, and herewith return the papers transmitted with your letter of the 30th of August last.

Very respectfully,

B. R. COWEN, *Acting Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 370.

HUDSONPILLER v. QUEEN.

A verbal sale accompanied by delivery of possession of the land is such a contract as is prohibited by the 13th section act of Sept. 4, 1841.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Sept. 18, 1874.

SIR:—I have examined the case of R. F. Hudsonpiller v. William Queen, involving title to the N. W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ section 15, 4 S. 8 W.,

Concordia, Kansas, on appeal from your decision of September 1, 1873, in favor of Hudsonpiller.

The facts of the case are in the main correctly recited in your decision.

In my opinion the verbal sale by Queen to Morgan, accompanied by delivery of possession of the land sold, was such a contract or agreement as is prohibited by the 13th section of the act of September 4, 1841. It is a contract that might have been enforced in a court of equity by the grantee, as against the claimant. (Story's Eq., § 761, and cases there cited.) When Morgan assigned his interest in the tracts to Hudsonpiller, the latter succeeded to all the rights of the former, including the remedy in equity against Queen.

It is evident, therefore, that Queen is within the prohibition of the statute so far as this land is concerned.

I affirm your decision, and return herewith the papers transmitted with your letter of June 6, 1874.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

To the Commissioner of the General Land-Office.

No. 371.

CATALA v. AUSTIN AND BATEMAN.

A sale should not be held to work a forfeiture of a pre-emption right unless it is a voluntary one and made while the party is in possession of his mental faculties.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Oct. 12, 1874.

SIR:—I have examined the case of Henry Catala v. A. A. Austin and Francis Bateman, involving title to the S. E. $\frac{1}{4}$, 4, 4, 6, Stockton, California, on appeal from your decision of December 11, 1873.

You awarded the land in controversy to Austin. Catala did not appeal, and the contest is now between Austin and Bateman. I think Austin's right is superior to that of Bateman, and I therefore affirm your decision awarding the land to him. Had Catala appealed, it is probable that the tract would have been given to him, as I do not concur with your office as to the effect of the alleged sale of Catala's house made by his guardian while he was insane.

I think that no sale should be held to work a forfeiture of a pre-emption right unless it was a voluntary one and made while the party was in the possession of his mental faculties. If made by a guardian while the pre-emptor was insane, and the pre-emptor should afterwards, and within a reasonable time, become sane and demand his pre-emption claim, (as was this case,) it should be awarded to him.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

Hon. Commissioner of the General Land-Office.

No. 372.

PHILIP WALDRON.

Held—That parol evidence was always admissible to defeat a deed or written contract on the ground of illegal consideration, duress, or

fraud, although such evidence directly contradict the statements contained in the instrument. Chitty on Contracts, 119. 2 Kent, 757. *Boyce v. Grundy*, 3 Peters, 219. *Taylor v. Riggs*, 1 Peters, 591. *Russell v. Southard*, 12 How. 139. See also *Villa v. Rodriguez*, 12 Wall., 323; where a deed absolute on its face was on *parol* evidence held to be a mortgage.

Also, held—That the deed in the present case was invalid as a deed. It was intended as a mortgage, and the contingency upon which it was to take effect has not happened. It has become void and is not sufficient to disqualify Waldron from making his entry.

Decision by the Secretary, Dec. 22, 1874.

No. 373.

SHUSTER v. GRADY *ET. AL.*

Mortgages, which have been released, are no bar to the completion of a pre-emption claim. Parties who take no appeal from a decision are considered bound thereby.

DEPARTMENT OF THE INTERIOR,

Washington, D. C, January 29, 1874.

SIR:—I have considered the appeal taken by John Shuster from your adverse decision of April 3, 1873, in the case of John Shuster v. Thomas O. Grady *et. al.*, involving his right to the W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$, and S. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 18, T. 6 N., R. 10 W., M. D. M., San Francisco District, California.

Your only grounds of decision against him appear to be the fact that at the dates of trial and your decision there were subsisting two mortgages executed by him against the land he claims.

These have been released and I think there is now no valid objection to his completing his claim in conformity to law. Your decision is modified accordingly. The other parties interested in your decision not having taken an appeal therefrom are considered bound thereby.

The papers in the case transmitted with your letter of Oct. 9, 1873, are herewith returned.

Very respectfully,

C. DELANO, *Secretary.*

HON. W. DRUMMOND, *Commissioner General Land-Office.*

II. VERSUS HOMESTEADS.

No. 374.

DAVID BURKETT.

Burkett filed as a pre-emptor and afterwards applied to file on another tract as a homestead.

Held—That he could not file on both. He could not reside on both. He must elect which he will hold.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 3d Feb., 1872.

SIR:—I have considered the case of David Burkett appealed from your office.

Burkett, November 11, 1870, filed as a pre-emptor on the S. W. $\frac{1}{4}$, Section 18, T. 94, R. 46, Sioux City, Iowa.

On the 2d Oct., 1871, he applied to take the W. $\frac{1}{2}$ of the tract as a homestead, and the E. $\frac{1}{2}$ under the pre-emption filing.

This he could not be permitted to do, as both the homestead and pre-emption laws require residence on the tract claimed under them, and Burkett could not have a legal residence on both of the two tracts claimed by him under the different laws.

He should, however, be permitted to complete his title to either half as claimed by him or to the whole tract as a pre-emption.

Your decision to this effect is affirmed and the papers herewith returned.

Very respectfully, C. DELANO, *Secretary.*
HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 375.

BEEBE v. HURLBURT.

While the land was withdrawn Beebe entered with his family. On the day of its restoration Hurlburt made a homestead entry on it. Afterwards Beebe, and on the same day of restoration, asked leave to file his D. S. on the same.

Held—That he had entered wrongfully, and that to allow him to take the land as against Hurlburt, would be to allow him to take advantage of his own wrong.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, July 29, 1871.

SIR:—I have examined the case of Day Beebe v. Thomas B. Hurlburt involving the right to N. E. $\frac{1}{4}$, Section 33, T. 9, N. R. 1 E., Marysville, California.

The land in controversy was withdrawn for railroad purposes February 14th, 1865.

July 6th, 1870, it was restored to pre-emption filing and homestead entry by published notice in accordance with a letter of the commissioner dated May 6th, 1870. On the day of its restoration Hurlburt appeared at the local office and applied to enter the tract as a homestead. His application was received; he made the required affidavit, paid the fee and received duplicate homestead receipt No. 779.

About an hour afterwards Beebe appeared at the land office and offered to file a declaratory statement on the tract as a pre-emptor. This the Register refused to receive on the ground that the tract was covered by the homestead entry of Hurlburt.

The Commissioner sustained the decision of the local officer, and Beebe appealed to the Secretary.

At the date of its restoration Beebe was living with his family on the land in controversy, where he had a house and other improvements.

Hurlburt claimed a possessory right to the land under the laws of California, in the prosecution of which he had recovered judgment against Beebe in one of the local courts.

Beebe did not by reason of his settlement before restoration acquire any right to the land, and the only question presented for decision is whether his occupancy of the land on the day of its restoration was an

initiation of a pre-emption right to which the homestead entry must be subject.

I am of opinion that it was not. He entered wrongfully, and to allow him to hold the land as against a person who had in all respects complied with the law would be to reward him for doing an unlawful act.

I recommend that the decision of the Commissioner be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by the Secretary, July 31, 1871.

No. 376.

CRYSTAL v. DAHL AND ENO v. McDONALD.

Land when once appropriated under the homestead law, is thereafter removed from pre-emption settlement and homestead entry, and can only be again subject to them by a cancellation of the homestead entry in the manner prescribed by law.

Such cancellation becomes effective at the date of the receipt of the order therefor at the local office.

To initiate a valid right under the pre-emption law to a tract of land covered by a homestead entry, some act of settlement must be performed by the pre-emptor *subsequently* to the cancellation of said homestead entry.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D.C., April 13, 1872.

SIR:—I have examined the case of Garrett Crystal v. Martin Dahl, involving the right to enter S. E. $\frac{1}{4}$, sec. 12, T. 2 S., R. 7 W., Concordia, Kan., on appeal from the decision of the Commissioner of the General Land Office of Nov. 17, 1871. Crystal settled on the land in controversy in December, 1870, at which date there was no land-office in the district where the tract was situated, the old one at Junction City having been closed Nov. 30, 1870. The new one at Concordia was not opened until Jan. 16, 1871. On this last mentioned date, Dahl entered the tract as a homestead. Subsequently, Crystal applied to file as a pre-emptor, alleging settlement in December, 1870. His application was at first refused by the local officers, but was afterwards allowed on receipt of the Commissioner's circular of Dec. 30, 1870.

When the old office at Junction City was closed, the land in controversy was covered by a homestead entry, which was subsequently, to wit, on the 6th day of December, 1870, cancelled by the Commissioner, notice of such cancellation being sent to the local land-office at Concordia. The Commissioner held that the homestead entry of Dahl was made subject to any rights that might be filed for within the time allowed by law, and that as Crystal within that time made several applications to file, and was in fact the first of the two claimants to settle on the land, he was entitled to enter the same, and that the homestead entry of Dahl should be cancelled. From this decision Dahl has appealed. While covered by an uncancelled homestead entry, land is not subject to pre-emption settlement or homestead entry. When once appropriated under the homestead law, it is thereafter removed from such settlement and entry, and can only be again made subject to them by a cancellation of a homestead entry in the manner prescribed

by law. (See my opinion in the case of Bowman, in answer to letter of Senator Corbett, where this point is fully discussed.) The order for cancellation takes effect from the date of its receipt by the local officers, subject, of course, to the right of appeal. Crystal settled before the cancellation of the prior homestead entry, and therefore acquired no right by virtue of such settlement. Neither can he take advantage of the fact that he was on the land at the date of the cancellation to antedate the right of Dahl, who, during the regular office hours of that day, appropriated it under the homestead law. He was on the tract wrongfully, and cannot be allowed to take advantage of his own wrong to the prejudice of another claimant in good faith, who has fully complied with all the requirements of law.

On the very day the old entry was cancelled, and before Crystal asserted his claim by asking to file, Dahl acquired a homestead right in the manner pointed out by the statute. This again removed the land from pre-emption and homestead appropriation, and the local officers very properly rejected in the first instance the proffered filings of Crystal. This view of the law is entirely consistent with the circular of December 30, 1870, which the local officers seem to have misinterpreted when they allowed the filings of Crystal. I recommend that the decision of the Commissioner be reversed, and that the entry of Dahl be allowed to stand. The case of *Gilman J. Nelson v. Peter Crystal*, in the same land district, on appeal from a similar decision of the Commissioner, involves identically the same facts, and should receive a like disposition. Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by the acting Secretary, April 13, 1872.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Aug. 5, 1874.

SIR:—I have examined the case of *Charles G. Eno v. W. H. McDonald*, involving the title to N. W. $\frac{1}{4}$, Sec. 10, T. 6, R. 10, Cawker City, Kansas, on appeal from your decision of Nov. 21, 1873. One Isaac A. Schafer made homestead entry of the tract May 18, 1871, which entry was cancelled by letter of your office, dated October 16, 1872, received at the local office October 29, 1872. October 30, 1872, Eno entered the land as a homestead. January 10, 1873, McDonald filed amended declaratory statement, alleging settlement October 26, 1872. The material part of your decision is in the following words, viz: "McDonald appears to have made his settlement October 26, 1872, as alleged in his D. S., and to have occupied a house upon the land belonging to J. Moulton, which he subsequently bought, together with all the improvements of the said Moulton. At the date of his first settlement upon the land he could gain no rights to the same, it then being covered by the uncanceled homestead of Schafer; but upon the receipt of the cancellation of said homestead at the district office, he being found upon the land, his right attached, *eo instante*, to the exclusion of the homestead right of Eno, filed the morning of October 30, and the homestead of Eno will accordingly be held subject to the ability of the said McDonald to perfect his claim under the pre-emption law."

From this decision appeal has been taken to the Department by Eno,

and error in two respects alleged: first, your finding of fact that McDonald settled in good faith prior to cancellation and the entry by Eno; second, your application of the law to the facts found. Admitting your statement of fact to be correct, (which is all that is claimed for McDonald,) I am of opinion your decision should be reversed. The cancellation of the prior homestead entry took effect when notice of such cancellation was received at the local office, and then, and not till then, was the land subject to further entry or settlement. (*Crystal v. Dahl*, Secretary's decision, April 13, 1872. *Opinions Assistant Attorneys-General*, vol. 2, p. 5.) Subsequently to this receipt Eno entered the tract as a homestead. McDonald's settlement as a pre-emptor, Oct. 26, 1872, was invalid, because made while the land was yet reserved by the uncanceled entry of Shafer, and he cannot be allowed to take advantage of his own wrong to defeat the right of Eno by claiming through it a prior right initiated subsequently to the cancellation. (*Beebe v. Hurlburt*, Secretary's decision, July 29, 1871. *Opinions Assistant Attorneys-General*, vol. 2, p. 149.) Your decision is, therefore, hereby reversed, and the homestead entry of Eno will stand as valid.

The papers transmitted with your letter of April 20, 1874, are herewith returned.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

To the Commissioner of the General Land-Office.

No. 377.

ROSS v. SINCLAIR.

A person in possession of a valid pre-emption claim may at any time within the lifetime of the filing commute it to a homestead, and that in so doing his right will relate back to the date of his settlement to the exclusion of intervening adverse claims.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 19, 1872.

SIR:—I have considered the case of *J. F. Ross v. Duncan Sinclair*, involving the right to the W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ and E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Section 28, T. 5 S., R. 4 E., Concordia, Kansas, offered land, coming up from your Office on appeal.

Ross, May 10, 1871, filed D. S., alleging settlement on the land May 5, 1871. On May 15, 1871, he commuted the same to a homestead. Sinclair, June 9, 1871, filed on the tract, alleging settlement May 10, 1871, and claims that as his settlement antedates the initiation of Ross' homestead claim, and as a homestead entry takes effect only from its date, he, Sinclair, should be permitted to take the land.

I am of opinion that a person in the possession of a valid pre-emption claim may at any time commute it to a homestead, and that in so doing his right will relate back to the date of his settlement, to the exclusion of intervening adverse claims to the land.

I therefore affirm your decision declaring Ross' right to the land as a homestead, and rejecting Sinclair's pre-emption claim.

The papers in the case, transmitted with your letter of May 10, are herewith returned.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner of General Land-Office.*

No. 378.

J. A. GORD.

Gord filed as a pre-emptor on land, which, after such filing, became double minimum.

He then sought to commute his filing to a homestead entry, and to include therein 160 acres.

Held—That he could not be allowed to do it, but might be permitted to have his original filing reinstated.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 24, 1873.

SIR:—I have considered the appeal of John A. Gord, *et al.*, from your decision of February 10th, 1873, relating to certain homestead entries of double minimum lands within the limits of the grant to the Northern Pacific Railroad Company.

Gord and fourteen others, subsequently to the withdrawal for railroad purposes, settled as pre-emptors on even numbered sections of double minimum land within the twenty mile limits of the road, and each claimed one hundred and sixty acres. During the months of August and September, 1872, they appeared at the local office, offered proof of settlement and cultivation, and asked to commute their filings to homestead entries for the full amount of land claimed. Their requests were granted, and the entries allowed.

You held that these entries should be cancelled for one-half of the quantity entered, on the ground that only eighty acres of double minimum land can be taken under the homestead act of 1862.

I affirm your decision, and return herewith the papers transmitted with your letter of the 15th ultimo.

The appellants pray that in case they are not allowed to hold the entire quantity claimed under their homestead entries they may be remitted to their original rights as pre-emption claimants. I see no objection to this, and direct that it be done in all cases when it is desired.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner of General Land-Office.*

No. 379.

KEISKER v. JOHNSON AND KING.

Land covered by a homestead is subject to a pre-emption claim initiated prior to the homestead, and filing should be received within the legal period after settlement.

A purchaser in good faith, and for a valuable consideration, of land covered by a cash entry, afterwards cancelled, is not accounted a trespasser, but is legally in possession.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., April 6, 1874.

REGISTER AND RECEIVER, *Marysville, Cal.*

GENTLEMEN:—I am in receipt of your letter of the 17th ult., transmitting appeal and other paper relative to the claim of William Keisker, for S. W. $\frac{1}{4}$ 32, 8 N., 2 E., M. D. M., together with report thereon.

From an examination of the same the following facts appear:

The records of this office show that Henry W. Keisker made pre-

emption cash entry 2,587 for above tract March 11, 1868; an investigation as to the fraudulent character of said entry was ordered by my letter "G" of October 18th, 1869, and hearing had September 13th, 1870, wherein said entry was declared fraudulent by the register and receiver; on the 24th June, 1873, said H. W. Keisker filed an abandonment of his said entry, whereupon the same was cancelled by my letter of Oct. 27th, 1873, and the land declared open to pre-emption and homestead entry by the first legal applicant.

On the 24th June, 1873, Wm. Keisker, who had previously purchased the land of H. W. Keisker, for a valuable consideration, and who had a residence and valuable improvements thereon, applied to file for same, and his application properly rejected by you for the reason that the tract was at the time covered by the uncanceled entry of H. W. Keisker, above shown.

Your action was, on appeal, affirmed by this Office, Oct. 27th, 1873.

On the 24th Nov., 1873, W. Neely Johnson made homestead entry 1,386, covering W. $\frac{1}{2}$ of said S. W. $\frac{1}{4}$; on the 28th same month, Homer King made homestead entry 1,388, covering E. $\frac{1}{2}$ of same.

On the 6th of January, 1874, Wm. Keisker, by his attorney, S. L. Rodgers, renewed his offer to file said tract, and his application was refused by you for the reason that the land was at that time covered by the aforesaid homestead entries of Johnson and King.

Wm. Keisker appears to have been on the land and in possession of valuable improvements at the date of receipt by you of my letter cancelling H. W. Keisker's entry, the earliest date at which he could allege settlement, and his offer to file appears to have been made within ninety days from that time.

Your action rejecting the same was, therefore, erroneous, as a homestead entry is always subject to any valid pre-emption claim that may have a prior initiation and be filed for the land within the time required by law.

You are accordingly directed to receive said filing and transmit the same with your current returns, referring on your abstract to this letter; he should be allowed to allege settlement from date of the cancellation of H. W. Keisker's entry.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Dec. 29, 1874.

SIR:—I have examined the case of William Keisker v. W. Neely Johnson and Homer King, involving title to the S. W. $\frac{1}{4}$ sec. 32, 8 N., R. 2 E., M. D. M., California, on appeal from your decision of April 6, 1874. I affirm your decision on the ground that the said Keisker, in good faith and for a valuable consideration, purchased the premises, by warranty deed, of H. W. Keisker, while the cash entry of the said H. W. Keisker was in full force. (*Croft v. Myers*, 13 Wall., 291.)

I return herewith the papers transmitted with your letter of September 24th last.

Very respectfully,

C. DELANO, *Secretary*.

To the Commissioner of the General Land-Office.

No. 380.

PARSONS v. PETIT.

By the 15th section pre-emption act of 1841, proof, affidavit and payment, must be made within one year of settlement on "offered" land. A homestead entry having been made subject to existing pre-emption rights, and such pre-emption rights having failed by reason of not making proof, payment, etc., within a year, the homestead entry should stand.

Decision by Acting Secretary Cowen, July 15, 1871.

No. 381.

STEVENSON v. GARRETT.

Garrett made a homestead entry. Stevenson subsequently settled and was allowed to file. Stevenson caused citation to issue on Garrett to appear on a certain date and "show cause why Stevenson should not be allowed to enter the land." Garrett appeared and offered the records of the land-office as showing his prior homestead. Stevenson then introduced evidence showing that Garrett had abandoned the land.

Held—That Garrett had interposed a proper defense to Stevenson's claim in accordance with the terms of the citation which, under that notice was all he was required to do, and therefore evidence of his abandonment was not admissible.

Decision by the Secretary, July 11, 1873.

III. VERSUS STATE SELECTIONS.

No. 382.

GLOVER v. UNIVERSITY OF CALIFORNIA.

Held—That a selection of lands in California made by an agent for the University of California, under the acts of July 2, 1862, and June 8, 1868, was not valid when made upon lands which were claimed and had been improved by a pre-emption settler, the University having instructed its agent to make no selections of such lands; and that a selection thus made should be cancelled.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., Aug. 1, 1872.

SIR:—I have considered the case of James Glover v. University of California, involving the right to the N. W. $\frac{1}{4}$ section 2 T. 5 N. R. 7, W. M. D. M., San Francisco, California, appealed by Glover from the decision of the Commissioner of the General Land-Office.

In December, 1853, Robert Searce settled and filed on this land as a pre-emptor. He sold to one Traverse, who in 1858 sold to Glover.

The same year Glover moved upon the land and has continuously resided there up to the present time. He has cultivated the entire tract, and has a house, buildings, fences and other improvements thereon, valued at \$3,000 in gold. March 27, 1871, he filed his D. S. for the land.

He makes affidavit that until a very short time before his filing he did not know that it was necessary for him to do so, and that he believed that the filing of Searce was subsisting and protected the land.

Sept. 7, 1870, H. A. Higley, Land Agent, for the University of California made application to select the land under the grant for that institution, acts July 2, 1862, June 8, 1868, for the benefit of I. M. Wood, who represented that there were no valid claims of any kind against the land.

Higley was appointed agent by the Board of Regents of the University, and acted under instructions from the Board.

Among other things he was instructed in making his selections not to interfere with a pre-emption settler, nor take advantage of a non-fulfillment of the law on the part of such settler.

Acting on the representations of Wood, he was innocently led into a violation of his instructions, and selected Glover's claim and improvements.

When the facts were brought to the notice of the Board of Regents, it repudiated the selections, and notified the United States local land officers that the University abandoned the same.

Wood protests against the abandonment, and claims that the selection having been made, there was no power in the University or her agent to abandon it.

This case is different from that of *State of California v. Kendall*, decided by the Interior Department, in which it was held that the Surveyor General of the State could not abandon a selection once legally made by him. That officer was specially empowered by law to do a certain thing, viz: select lands for the State. When he had properly done that his authority was exhausted. He was *functus officio*, and could not abandon the selection and divest the State of title.

In the present case Higley was an agent appointed by the Board of Regents to carry out their instructions, and in the supposed performance of his duty, violated these instructions. It is a principle of law, too well established, that a principal is not bound by an act of an agent done in violation of his authority. The Board acted properly in repudiating the unauthorized action of its agent Higley.

His acts were valid only so far as they conformed to his instructions, and the selection in this case having been made contrary to instructions, was properly repudiated by the Board and should be cancelled.

There being no other adverse claim to the land, Glover should be permitted to take it in compliance with the pre-emption law. I advise that the decision of the Commissioner be reversed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Decision of the Secretary, August 2, 1872, adopting this opinion.

No. 383.

UNIVERSITY OF CALIFORNIA v. BLOCK.

A declaratory statement on file in the proper office is notice to the world of the location and extent of a pre-emption claim; and no subsequent amendment, except for error or mistake, can operate to defeat a right initiated prior to such amendment.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Aug. 26, 1874.

SIR:—I have examined the case of the University of California v.

Alfred Block, involving title to N. E. $\frac{1}{4}$ S. E. $\frac{1}{4}$ sec. 2, T. 9 S., R. 2 W., M. D. M., California, on appeal from your decision of March 27, 1873

You rejected the claim of the University on two grounds: first, because at the date of selection the tract was double minimum land; second, because at the date of selection the land was reserved for a public purpose, and was not therefore under the 12th section of the act of 1853 (10 Stat., 248,) subject to selection.

You erred upon the first point mentioned in your application of the law to the facts. The selection in question was not made under the act of 1853, but under that of July 2, 1862, (12 Stat., 505,) as amended by that of June 8, 1868, (15 Stat., 68,) and March 3, 1871, (16 Stat., 581,) the latter of which expressly confers the right to select double minimum land, acre for acre, the difference in price to be paid by the State to the United States when the land shall be patented. You erred on the second point named both in your finding of fact and your application of the law thereto. The records of your office show that at the date of the selection the land in question was not reserved for any purpose whatever. It is an even section within railroad limits, and was erroneously withdrawn in 1867, but was restored in 1868. In 1871 it was open to pre-emption and homestead settlement. It was not, therefore, within a reservation for public purposes.

The act of March 3, 1871, expressly gives to the State the right to select any lands "*subject to pre-emption, settlement, entry, sale, or location under any laws of the United States.*" The land in contest was subject to pre-emption, settlement, and entry under general laws on the 1st day of June, 1871. It was therefore subject to selection by the State under the act of July 1, 1862. Even if reserved for railroad purposes, the selection would still have been regular and valid if subject to pre-emption. .

A proviso to the act of 1862, however, excepts from location land covered by rightful claims under the pre-emption and homestead laws. Did Block, the claimant herein, have a rightful pre-emption claim at the date of the selection? I think not. He had previously settled and filed for the full quantity of one hundred and sixty acres upon tracts contiguous to that in controversy. There is no question whatever that the tracts filed for were the ones actually claimed. He does not claim to have made any mistake, either in description or otherwise. August 31, 1871, upon the State selection, he filed an amended declaratory statement abandoning 80 acres of his former claim, and including in lieu thereof the forty acres in contest. It is claimed that on or about the 18th of May, 1871, finding that the eighty acres referred to were claimed by another settler, and being advised that there was no valid claim to the forty acres in contest, he then concluded to abandon the eighty acres and take the forty acres in dispute.

However this may have been, it is clear that prior to the State selection the only work he did in connection with this forty was to clear out and widen an old road through the land, which led to and was the nearest route from his original claim to the public road. This work was done partly in April, when, according to his own testimony, he did not claim the land. A small barn stood upon the dividing line between two forties, partly on the land in contest. There is nothing, however, to show that it was intentionally so placed, and having been built prior to the first declaratory statement, it is evident that it was not then con-

sidered an improvement upon the land in contest. June 5, 1871, after the State selection, he moved his house from the eighty acres referred to and placed it upon or near the dividing line between the land in contest and the forty acres south of it. He has since fenced a portion of the land.

It is shown that when he abandoned the eighty acres referred to, he did so in view of the promise of the contesting claimant to pay him twenty-five dollars and his expenses to the local office and return, which money was actually paid him after his said return on or about the 5th day of June, 1871. Admitting, however, the facts claimed, and I am of the opinion that the abandonment of the old claim and the initiation of the new one was invalid as against the State selection. The declaratory statement on file was notice to the world of the location and extent of the claim. And no subsequent amendment except for error or mistake can operate to defeat a right previously initiated.

I reverse your decision and award the land to the University, returning herewith the papers transmitted with your letter of April 22, 1874.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

To the Commissioner of the General Land-Office.

No. 384.

STATE OF CALIFORNIA v. HAILE ET. AL.

Where a State selected certain tracts as indemnity for a certain section 36, which section was afterwards found to be in place and not lost to the State and thereupon substituted other lieu lands in place of said section 36.

Held—That such substitution was virtually a new selection and could not affect any valid pre-emption claim in the meantime accruing and attaching to the land.

Where the State of California claims lands under the 1st section, act of July 23, 1866, full compliance with the State laws regulating sales of land must be shown.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 8th April, 1872.

SIR:—I have considered the case of the State of California v. John W. Haile and Samuel Watson, involving the right to the N. $\frac{1}{4}$ of Sec. 8, T. 4, N. R. 2 E., San Francisco district, California.

The township plat was filed 19 March, 1863. The land was withdrawn for railroad purposes 30 January, 1865, and was restored 8 June, 1868.

Haile, on the 23d October, 1867, filed his declaratory statement, alleging settlement on the N. W. $\frac{1}{4}$, 4 October, 1867.

Watson, on the 9th June, 1868, filed his declaratory statement, alleging settlement on the N. E. $\frac{1}{4}$, 20 November, 1867.

The State has twice attempted to locate the tract as indemnity school-land,—1st. Before survey, on 6 July, 1861, in lieu of the N. $\frac{1}{4}$ of Sec. 36, T. 12, S. R. 20 E., for the benefit of James M. Duncan, and again on the 10th October, 1866, in lieu of same W. $\frac{1}{4}$ of Sec. 36 aforesaid, for whose benefit not stated.

The receipt of the County Treasurer of Solano county shows that Duncan paid his first instalment on the land 30 October, 1868.

The records of your office show that the above-mentioned section 36, in lieu of which the land in controversy is claimed, is in place and not lost to the State. She is, therefore, not entitled to this land as indemnity.

It is argued by counsel for the State, that she, in June, 1869, substituted other lieu lands in place of said section 36, confirmed to the State, thereby rendering the selection valid.

This substitution was virtually a new selection in place of the former one, which had failed and could not affect any valid pre-emption right accruing in the meantime and attaching to the land.

It is also urged that the State sold the land in 1861, to Duncan, and that the sale was confirmed by the 1st section of the act of 23d July, 1866, (14 Stat., 218.) One of the conditions of the State law, under which the lands were disposed of to the applicant, Duncan, is, that he pay 20 per cent. of the purchase money and one year's interest on the balance in advance within fifty days of the date of location. This he failed to do. Therefore this is not a case where the State had sold the land to "a purchaser in good faith under her laws," and is not confirmed by the 1st section of the act of 1866.

I think Haile and Watson are entitled to the tracts claimed respectively by them, on showing due compliance with the pre-emption law. Your decision to this effect is therefore affirmed, and the papers in the case accompanying your letters of 21 February and 6 March last, are herewith returned.

Very respectfully,

C. DELANO, *Secretary.*

The Commissioner of the General Land-Office.

No. 385.

AURRECOECHEA v. STATE OF CALIFORNIA ET AL.

Land within the "Lewis Survey" of Las Pocitas rancho; State selection made prior to the adjustment of the confirmed grant, and hence on land absolutely reserved. The selections being absolutely null and void *ab initio*,

Held—That they did not operate as a withdrawal of the land (then already withdrawn). Hence, on release of reservation by final adjustment of the grant, the pre-emptors were recognized as lawful claimants as though no reservation had ever existed, as provided by act approved March 3, 1853, and said selections treated as nullities.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., March 1, 1875.

SIR:—I have examined the case of Francisco Aurrecoechea v. The State of California, the University of California, Duncan Sinclair *et al.*, involving title to certain lands in Township 3 S., 3 E., M. D. M., on appeal from your decision of March 7, 1874.

I affirm your decision so far as it rejects the claims of Aurrecoechea and the State, and a portion of the claim of the University, on the grounds and for the reasons therein stated. I also, upon the ground stated by you, affirm your award to the Western Pacific Railroad Company of all that portion of the S. $\frac{1}{2}$ S. W. $\frac{1}{4}$ Sec. 5, lying outside of the Lewis survey of the Las Pocitas rancho.

With reference to the claims of the several pre-emptors, (except that of Sinclair for S. $\frac{1}{4}$, S. E. $\frac{1}{4}$ sec. 7,) you held that the land was reserved from settlement by the invalid selections for the State and the University, and that such reservation continued until removed by the cancellation of the selections. You accordingly refused to approve the pre-emption claims, but directed that the claimants be allowed to amend their filings.

As the selections referred to were irregular and invalid, the land covered by them was not thereby removed from settlement. (*Haile v. State of Cal.*, Secretary's Decision, April, 1872. *McLain v. Stanley*, Id., Feb. 5, 1875.) The claims of the pre-emptors are, therefore, entitled to consideration upon their merits. * * * *

C. DELANO, *Secretary*.

To the Commissioner of the General Land-Office.

No. 386.

STATE OF CALIFORNIA v. FLOYD, ET AL.

1. Where a claimant was present at the land office on a certain day ready to make entry, but through no fault of his was prevented from so doing until next day, if necessary to its validity his entry will be allowed to take effect from the first day.
2. Where the first State selection was illegal, the second selection on the same tract must be formally made.
3. A filing or entry is *prima facie* a valid claim, and the party attacking it must show affirmatively cause for its cancellation.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., September 18, 1872.

SIR:—I have considered the case of State of California v. William J. Floyd, *et al.*, homestead and pre-emption claimants, involving the right to certain tracts of land in the Stockton district, Cal.

This land was within the twenty-five mile limits of the withdrawal of January 31st, 1865, for the C. P. Railroad, and was restored July 5th, 1870.

On the latter date all the homestead and pre-emption claimants made entry of, or filed their claims in the local office save T. J. Tatum, and he made his entry on the following day of July 6th, 1870. It appears that Tatum was at the office, ready and willing to make his entry on the 5th of July, but was prevented from so doing by the local officers having established a rule as to the order in which they would receive filings and entries, by which his turn was not reached until next day. He made all possible exertion to make his entry on the 5th of July, and it was through no fault or lack of diligence on his part that he failed. If it were necessary to the validity of his claim, I should be inclined to hold that his entry should be allowed to take effect from that date.

The State, May 1st, 1868, made selection of the land, and the same was erroneously allowed by the acting register, inasmuch as it was at that time included in the withdrawal for the benefit of the railroad. While the papers remained in the local office, and on the 5th of July, 1870, the State Surveyor General telegraphed to the Register, requesting him to refile the old applications. He endorsed in pencil upon the back of the original applications, "Refiled July 5th, 1870." This is the selection relied upon by the State.

By the 8th section of the act of September 4th, 1841, (5 Stats., 455,) under which the State claims the selections in satisfaction of the grant, are required to be made "in such manner as the Legislature shall direct."

The State law requires formal application to be made, and an affidavit by the party for whose benefit the selection is made, setting forth, among other things, "that there are no improvements of any kind on said land other than those of the applicant."

The telegram of July 5th, 1870, from the State Surveyor General to the U. S. Register, did not and could not meet the requirements of the act, and was not therefore a valid selection. Nor could it revive the erroneous selection of May 1st, 1868. A new and complete selection by the State was necessary to enable her to take the lands.

Counsel for the State dwell at length upon the fact that the adverse claimants made no proof of their claim on the trial. They were not required to do so. A filing or entry correct in form is *prima facie* evidence of a valid claim, and it is for the party attacking it to show affirmatively cause for its cancellation.

The State fails to establish her claim to the land, and the adverse claimants, including Tatum, may be allowed to complete their claims in conformity to law.

Your decision, as modified hereby, is affirmed, and the papers in the case transmitted with your letter of May 21st are herewith returned.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 387.

McNIDER v. STATE OF CALIFORNIA.

McNider filed D. S., alleging settlement July 18, 1868, and August 9th, 1868, made cash entry at minimum price and took his duplicate receipt.

The State selected the tract as school indemnity lands.

After entry by McNider, he was charged with bad faith, and a hearing was ordered by the commissioner.

McNider had a *prima facie* case (11 Opinions, 498, 6 Wallace, 418), subject to be defeated, upon fraud being shown. (3 Op. 96.)

In such case the *onus* is upon the party alleging the fraud.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Nov. 17, 1871.

SIR:—I have considered the papers transmitted with your letter of the 23d of August last, in the case of Matthew McNider v. the State of California, involving the right to the S. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Sec. 25, T. 8, S. R. 3 W., San Francisco, Cal.

It appears that McNider, on the 24th of October, 1868, filed his declaratory statement, in which he alleged settlement on the tract in question 18th of July, 1868. On the 9th of August, 1869, he was allowed by the local officers to make cash entry, paying the minimum price for the one hundred and twenty acres, taking the usual oath, and obtaining the customary duplicate receipt and certificate of purchase. On sworn allegations of bad faith and fraud on the part of McNider, your office ordered a hearing of the case, which was accordingly had.

While the testimony certainly throws doubt on the sufficiency of McNider's final proofs, doubts which should perhaps have caused the local officers, if aware of them, to hesitate as to the issue of the final papers to him, I am of opinion that it does not so clearly establish the charges of bad faith and fraud as to require the cancellation of his entry.

Your decision is therefore affirmed and the papers are herewith returned.

I am, Sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 388.

STATE OF CALIFORNIA v. BROWN AND DAUBENSPECK.

The State claimed the land in lieu of school lands, Daubenspeck as a pre-emptor. The evidence showed that D. went into possession as tenant of the Mopa Wood Co. He so remained until after the selection by the State.

Held—That the land should be given to the State.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, July 10, 1871.

SIR:—I have considered the case of the State of California v. Thomas C. Brown and James B. Daubenspeck. Land in controversy N. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and S. E. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, of sec. 13 T. 8 N. R. 6 W. M. D. M.

The town plat was filed in the district office March 16, 1869. On the same day the land was selected by the locating agent of the State of California in lieu of certain school lands.

Thomas C. Brown filed declaratory statement March 19, 1869, alleging settlement January 7, 1869. Brown was not notified and did not appear at the hearing. The contest is, therefore, between the State of California and Daubenspeck. The decision of the local officers affirmed by the Commissioner, rejected the claim of Daubenspeck on the ground that the location by the State was made before he had initiated in good faith a pre-emption claim. Daubenspeck appeals.

Daubenspeck went upon the land in 1868 as the tenant of the Mopa Wood Company, a corporation existing under the laws of the State of California. They now claim the land in controversy under the State. Daubenspeck chopped wood for the company and lived in a house which was then on the land until April, 1869, when he erected a small cabin within a few feet of the old house and moved into it. A quantity of the land was enclosed and partly cultivated when he went upon it, in 1868. It does not appear that he did anything upon it but cut wood for the company until April, 1869, when he erected the small house mentioned.

He denies under oath that he was ever the tenant of the company, but W. S. Sayward, the agent of the company, swears positively to the lease, and recites it in terms.

J. W. Sayward also swears that the claimant admitted to him that he held the land as tenant of the company. Daubenspeck brought action against the company for services performed in cutting wood, in

which he recovered judgment for the amount claimed, *less rent for the house* and the cost of provisions furnished him by the company. It is not attempted to impeach the witnesses on either side. The tenancy is affirmed on one side by two witnesses and denied by one on the other, and all of them are interested in the results of the controversy. The weight of evidence is in favor of the lease.

The Mopa Wood Company has no right upon the land and were trespassers on the public domain. The land was unsurveyed, not subject to selection, but open to pre-emption settlement, and had the contestant at any time prior to survey and selection initiated a *bona fide* pre-emption claim, it would have been admitted to the exclusion of the company. But he does not appear to have taken any steps in that direction until April, 1869, a month after the land was selected by the State. Up to that time he had done nothing to repudiate his tenancy from the company, and can hardly be considered as acting in good faith as a pre-emptor. He evidently did not think of claiming as a pre-emptor when he went upon the land, and the first act showing any such intention was the filing of the Declaratory Statement under which, however, he does not prove any change in the relative position of landlord and tenant until April, 1869.

In my opinion the decision of the Commissioner should be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Decision by Acting Secretary Cowen, July 11, 1871, adopting this opinion.

No. 389.

McCULLY ET AL. V. STATE OF CALIFORNIA.

Land within the Dyer Survey of the Los Pocitas rancho, which was disregarded by the U. S. Surveyor General, and the land surveyed.

Held—That the State had a right to treat his action as legal, and to select the tracts in question as indemnity lands before pre-emption claimants had acquired any rights thereon.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, D. C., January 11, 1872.

SIR:—I have considered the appeal of William McCully, P. Gleeson, D. Murray, R. Mooney and J. S. Griswold, from the decision of the Commissioner of the General Land-Office, refusing to permit them to make pre-emption filings on certain lands in Tp. 2 S., R. 1 E., Mt. Diablo Meridian.

The township plat was filed April 15th, 1865. The State of California selected the lands claimed on the 12th and 13th of June, 1865, as indemnity for sections 16 and 36, and under the acts of 1853 and 1859.

All of the appellants made their settlements after the State selections, except Griswold. He settled in 1861, but did not file his declaratory statement within three months from the filing of the township plat, nor until after the State selections had been made.

In October, 1865, the lands were included in the survey of the rancho "Los Pocitas," being a private Mexican land grant. This survey was disapproved by the Commissioner of the General Land-Office, and a new one made in March, 1869, which was duly approved by the Com-

missioner, May 11, 1870. This survey excluded the lands in controversy. The Secretary of the Interior approved the State selections, September 8th, 1870. He also approved the survey of the rancho "Los Pocitas" on the 6th of June, 1871, the same having been carried up on appeal. The Surveyor General, California, directed the release of said township 2 from suspension on the 21st of June, 1871, and on the 5th of July, 1871; these appellants offered their declaratory statements for filing. The rancho "Los Pocitas" appears to have been a grant of two leagues within certain exterior limits containing a much larger quantity of land.

It is now claimed by counsel for appellants, that by law all of the land contained within the exterior limits of "Los Pocitas" was withdrawn from State selection until the definite limits of that rancho were ascertained by actual survey, duly approved.

I understand that the Surveyor General of California has been duly instructed to withhold from survey all lands claimed as private grants, or within the exterior limits of such grants. In this case he seems not to have regarded township 2 as such lands, and to have surveyed and treated it as public lands, and filed the plat of the same with the local officers.

The State in my opinion had a right to treat his action as legal, and finding this township surveyed by the proper United States officer as public lands, it had a right to select them as indemnity lands. This it did before the pre-emption claimants acquired any right to them. The Secretary approved the selections. The State has done all that the law required. The lands are now excluded from the rancho "Los Pocitas," and I am of opinion that the decision of the Commissioner should be affirmed.

Very respectfully,

W. H. SMITH, *Ass't Att'y General*.

HON. C. DELANO, *Secretary of Interior*.

Concurred in by the Secretary, Jan. 16, 1872.

No. 390.

TAYLOR ET AL. V. CALIFORNIA.

It is competent for the Government to inquire into an illegal appropriation of public land, and to accept the suggestion of any party, though not in interest, to that effect, and if it be found from the records of the case that a claim has been, through inadvertence or other cause, illegally allowed, to reverse, so far as practicable, its action.

A Mexican grant is not finally rejected after adverse action of the district court until the right of appeal to the Supreme Court has been waived, the time for appeal expired, or the claim rejected by said court.

An attempted restoration by the surveyor-general of the land within a Mexican claim not finally rejected is inoperative, null, and void, and the State selections thereunder fall with it.

A State selection on lands held in reservation by an unadjusted Mexican grant is absolutely null and void, and is not a bar to pre-emption claims subsequently initiated.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., March 9, 1875

SIR:—I have considered the case of William F. Taylor, Henry Klein-smith, W. S. Hampton, John F. Robinson, W. E. Faulkner, and George C. Dwinelle, pre-emptors, v. The State of California, involving the right

to certain described tracts of land within the claimed limits of the rejected Albion grant, in the San Francisco land district, State aforesaid.

This grant was confirmed by the Board of Land Commissioners in November, 1855; rejected by the United States district court in June, 1867, appealed to the United States Supreme Court, and the appeal docketed and dismissed, because not perfected, October 22, 1869; appeal again filed and again docketed, and dismissed for the same cause November 22, 1872.

In October and November, 1867, the surveyor-general for California extended the public surveys over the land claimed in the grant, and on November 25 and 27, filed plats of the same in the local office, withdrew them December 2, 1867, restored them January 24, 1873.

During the few days in 1867, that the plats were on file in the local office, and on November 30, 1867, the State made formal selections of the tracts in dispute as indemnity school lands.

In February and March, 1873, after the restoration of the plats, the pre-emption claimants applied to file on the tracts severally settled on and claimed by them, but their filings were rejected because of conflict with the previous State selections aforesaid. May 13, 1873, you affirmed the action of the local officers, and from your decision appeal is taken to the Department.

It is claimed by the pre-emptors that there could be neither survey nor appropriation of the land embraced within the grant until its final rejection; that it was not finally rejected until November 22, 1872; that the surveys made by the Surveyor-General in 1867 were without authority of law; that the land being legally unsurveyed and reserved by the grant was not subject to the State selection, and such selections were of no effect, and that when the reservation created by the grant was removed, and the land became subject to disposal, they were the first legal claimants thereto, and that they should be allowed to perfect their claims.

The State claims, 1st. That the pre-emptors have no right to call in question her claim, because at the date of the selections they had no interest in the land; 2d. That a *de facto* survey having been made, the State had a right to treat it as legal and make her selections, and that they became a final appropriation of the land; and, if the preceding points do not avail, 3d. That the date of final rejection of the grant was in June, 1867, when it was rejected by the district court, and that the surveys and selections, being subsequent thereto, were legal and of full effect.

In regard to the first point urged by the State, I do not think it is well taken. It is competent for the Government to inquire into an illegal appropriation of public land, and to accept the suggestion of any party, though not in interest, to that effect, and if it be found from the records of the case that a claim has been, through inadvertence or other cause, illegally allowed, to reverse, as far as practicable, its action. The previous decisions of the Department, (as in case of J. R. Bonesteel,) refusing to permit a stranger in interest to attack a completed entry for fraud, are not in contravention of this principle. In those cases the record showed full compliance with law, and the application was to be permitted to prove a different state of facts from that shown in the record.

For convenience I will consider next in order the third point urged by the State. I do not think that it can be maintained. The Depart-

ment has uniformly held that a Mexican grant was not finally rejected, after adverse action of the district court, until the right of appeal to the Supreme Court had been waived, the time for appeal expired, or the claim been rejected by said court. (See case of *W. P. R. Co. v. John Roland*, July 1, 1871, and *Davis v. McClay*, Dec. 16, 1873.) It will scarcely be contended that the action of the district court was final while there was a possibility of its being reversed by the superior tribunal, and there can be as little question that this state of suspense continued until, and only ended when, the appeal was dismissed, at a time when the period allowed for taking the same, and in which it might be renewed, had expired, to wit, November 22, 1872. This I think is the date of final rejection.

There remains the second point made by the State, as to the validity of the survey and the selections made under it.

That both were made while the land was covered by the exterior boundaries of a Mexican grant not finally rejected, is established.

The question is, whether the land was thereby so reserved as to render the survey illegal and the selections invalid.

The State relies largely on the decision of the department in the case of *William McCully et al.*, involving the right to certain lands within the "Dyer survey" of the Las Pocitas rancho. The cases are very dissimilar. In the case at bar there is no dispute as to the exterior boundaries, nor that the tracts in dispute are within them. In the McCully case the lands involved were not within the claimed boundaries of the grant (Las Pocitas) as properly indicated by what is known in the case as the "Lewis survey" of four leagues, but were embraced in a very much larger and fraudulent survey called the "Dyer survey" of eleven leagues, made in an attempt to swell a two-league grant to one of much larger quantity. This latter survey was ignored by your office, and your action approved by the department for reasons set forth in the decision of your office, in the case of *St. Clair v. W. P. R. R. Company*.

The decision in the McCully case simply decides that there was no reservation created by the "Dyer survey;" that the surveyor-general's action in disregarding it and extending the surveys over it was proper, and that the lands were public lands never reserved, and were therefore subject to State selection and other disposal. That lands within the exterior boundaries of a Mexican grant which has been duly presented to the Board of Land Commissioners, and not finally rejected, are reserved, is well settled.

The act of March 3, 1851, (9 Stats., 633,) provides that all lands, the claims to which have been finally rejected, or have not been presented for confirmation as required by the law, "shall be deemed, held, and considered part of the public domain of the United States," thus plainly implying that until the claims were so finally disposed of the land should be reserved.

The act of March 3, 1853, (10 Stat., 244,) recognizes the validity of certain reservations, and modifies the effect in the case of claims finally rejected.

The instructions of your Office to the surveyor-general of California, dated November 28, 1855, expressly direct that officer to respect such boundaries, and close the lines of public survey in such manner as will most nearly approximate thereto. They inform him that "the lands thus designated will be held in reserve, as covered by unconfirmed claims, until a decree shall have been rendered either of confirmation or rejection."

These instructions are still in force. The question of such reser-

vation, and the effect of an attempted disregard of it by the surveyor-general, was considered and decided in the case of the *W. P. R. R. v. John Roland*, before cited. In the opinion of the Assistant Attorney-General of July 1, 1871, (1 Opins., 52,) adopted by me, the following language occurs: "When Government lands in California came to be offered at public sale, the local officers, under very proper instructions from the General Land-Office, reserved from such sale all lands to which there were existing private claims.

"This was within the scope of their authority, acting under the direction of the Commissioner of the General Land-Office. The attempted restoration of the land by the surveyor-general of California was invalid, because made while the right of appeal from the district to the Supreme Court remained unwaived. Until the expiration of the time for appeal, or until waiver of such right, the claim cannot be said to be 'finally rejected,' and therefore, by the language of the statute, was not subject to the power of the surveyor-general for restoration."

The principles enunciated in the case were followed in the similar case of *Johns v. Miller*, decided December 2, 1872, wherein it is held that "the attempted restoration by the surveyor-general of land within a Mexican claim not finally rejected was entirely inoperative, null, and void."

These cases are in point, and the principle involved is conclusive of this second point of the State. Applied to this case, the attempted restoration of the land by the surveyor-general in 1867, becomes "inoperative, null, and void," and the State selections *ex necessitate* fall with it.

The land remained in a state of reservation until after the rejection became final, and the plats were restored January 24, 1873.

The pre-emption filings in question appear to have been the first legal claims then presented, and should have been received. They should now be treated as if filed at the date they were offered, and the claims under them allowed to proceed to completion in conformity to law.

As the consideration of the points urged by the State covers all the claims of the pre-emptors and is decisive of the case, it will not be necessary to consider the latter separately.

Your decision is reversed, and the papers transmitted with your letter of January 28, 1874, are herewith returned.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

To the Commissioner of the General Land-Office.

See Title IV., No. 434.

IV. JUDICIAL DECISIONS.

If the register and receiver undertake to grant land, on a pre-emption claim, which is withdrawn from private entry, their act is void. *Wilcox v. Jackson*, 13 Pet., 498.

A section of land, directed by the president to be reserved for military purposes, is not liable to entry under a pre-emption claim. *Ibid.*

A reservation of lands for a specific purpose, withdraws it from general location, and from pre-emption right. *Turner v. American Baptist Missionary Union*, 5 McL., 344.

No pre-emption right can be acquired to land, whilst the Indian title continues. *Russell v. Beebe*, Hemp., 704.

An officer of the United States is not deprived, by any statute, of the benefit of the pre-emption laws. *United States v. Fitzgerald*, 15 Pet., 407.

No reservation or appropriation of a tract of land can be made, after a citizen has acquired a right to it, under a pre-emption law. *Ibid.*

If a tract of land have been severed from the public domain, by a legal appropriation of it, for any public purpose, it is no longer subject to the pre-emption law. *Ibid.* s. p. *Kissell v. St. Louis Public Schools*, 18 H., 19. *Barnard v. Ashley*, *Ibid.*, 43. s. c. *Hemp.*, 665. *Hale v. Gaines*, 22 H., 144.

The decision of the register and receiver, as to the validity and extent of a pre-emption right, can only be impeached for fraud. *Lytle v. Arkansas*, 9 H., 314.

The right of a pre-emptioner is limited to the fractional quarter section on which his improvements are made. *Ibid.*

The right of a pre-emptioner can not be impaired by a selection of lands under a subsequent grant by Congress. *Ibid.* s. p. *Clements v. Warner*, 24 H. 394. *O'Brien v. Perry*, 1 Bl., 132.

The title of a pre-emptioner is superior to one by patent, issued on a location under a floating right. *Cunningham v. Ashley*, 14 H., 377.

Where two persons are settled upon the same quarter section, the act of 1830 sanctions a division of it between them. *Ibid.*

A patent, which by reason of a void survey and division, appropriates to one pre-emption claim, what belongs to another, is void, as against the owner of the latter claim. *Brown v. Clement*, 3 H., 650. Overruled in *Gazzam v. Phillips*, 20 H., 372.

The right of a pre-emptioner will prevail over a selection under a donation law, returned on the same day on which the pre-emption law was passed. *Barnard v. Ashley*, 18 H., 43. s. c. *Hemp.*, 665.

The equity of a pre-emption claimant, who has obtained his certificate, paid the purchase money, and entered into possession, can not be defeated by a subsequent entry, on which a patent has issued. *Hughes, v. United States*, 4 Wall., 232.

The Commissioner cannot set aside a sale to a pre-emptor, because by a subsequent survey, his house is found not to be within the tract sold; the government is bound by the original survey. *Lindsey v. Hawes*, 2 Bl., 554.

If the house of a pre-emptor be built on the dividing line of two quarter sections, his residence avails as the foundation of a pre-emption right to either. *Ibid.*

A settler, entitled to pre-emption, has an assignable interest. *Thredgell v. Pintard*, 12 H., 24.

If his assignee re-assign, subject to the payment of a certain sum to the original pre-emptioner, the latter has a lien on the land therefor, which he may enforce in equity, notwithstanding the second assignee may have taken out a patent in his own name, under a subsequent pre-emption law. *Ibid.*

The quantity of land granted to a patentee, under the pre-emption law of 1830, is to be ascertained from the description in the patent. *Gazzam v. Phillips*, 20 H., 372.

Under the act of 1834, the assignment of a pre-emption right before the issuing of the patent was valid. *Marks v. Dickson*, 20 H., 501.

But an assignment before an entry at the land-office was void. *Ibid.*

A power, however, though executed before the location, was sufficient to justify an assignment made after the location. *Ibid.*

Where one presented a claim under the act of February 5th, 1829, to certain lots in Galena, as the legal representative of a settler, for which he obtained a certificate, and paid the purchase money, a patent issued thereon to the legal representatives of the original settler, enures to his sole benefit. *Morehouse v. Phelps*, 21 H., 294.

The person who commences an improvement has a right to continue, and any one who intervenes may be considered a trespasser. *United States v. Stanley*, 6 McL., 409.

But if the first occupant give way to a second, to whom the right of pre-emption is granted, it is good against all the world, except the first occupant. *Ibid.*

And if the first occupant abandon his right that of the second cannot be questioned. *Ibid.*

A settlement under the Oregon donation act gives the same rights as are conferred by the pre-emption laws: the settler has an estate, which cannot be defeated for want of a patent. *Johnson v. United States*, 2 N. & H., 391.

After a recognition of the claimant as a lawful settler, by the surveyor-general, and payment of the consideration for a grant, his settlement cannot be treated as an intrusion. *Ibid.*

Where the owner of land in Louisiana fronting on the Mississippi, obtained a certificate for back land, which he was not entitled to either by the act of any public surveyor, or by his equitable right to a protraction of his side lines, *Held*—That his title was invalid, as against an adjoining proprietor, who had a right to enter and purchase the land, under the act of June 15, 1832, and did so enter and purchase. *Jordan v. Barrett*, 4 H., 169.

Under the former government of Louisiana, the regulations of O'Reilly, &c., recognized the equitable claim of the owners of lands fronting on rivers, to a portion of the back lands; and after the cession, the United States did so, also. *Ibid.*

The proviso to the act of June 15, 1832, requiring pre-emption claimants of back lands in Louisiana, to give notice of their claims, before proclamation of sale, was prospective merely, and did not apply to a case in which proclamation had been made before its passage. *Surgett v. Laprice*, 8 H., 48.

The proviso to the 5th section of the act of March 3, 1811, excluding from the right of pre-emption, back lands "fit for cultivation, bordering on another river, creek, bayou, or water-course," refers only to lands bordering on some navigable water, and which are also fit for cultivation. *Ibid.*

The decision of the principal deputy-surveyor, under the superintendence of the surveyor-general, was conclusive of the rights of proprietors of contiguous lands, on a stream in Louisiana, as to the division of adjoining back lands, to which they had a pre-emption claim, under the act of March 3d, 1811. *Haydel v. Dufresne*, 17 H., 23.

The right of pre-emption given to claimants under a Spanish or French grant, by the act of 1832, did not depend on actual residence and house-keeping. *O'Brien v. Perry*, 1 Bl., 132.

The acts of 4 September, 1841, 29 May, 1830, and 23 January, 1832, relate to pre-emption rights conferred upon actual settlers; they do not apply to a case where no entry has been made under either of them. *Irvine v. Irvine*, 9 Wall., 617.

A party claiming title by pre-emption must prove actual residence

upon the land, and improvements made thereon by him. *Brisbois v. Sibley*, 1 n. Minn., 230

Occupation and improvement on the public lands, with a view to pre-emption, do not confer a vested right, as against the government; such vested right is obtained only when the purchase-money has been paid, and the receipt of the proper land officer given to the purchaser; until then Congress may withdraw the land from entry, though the settlers' right may be thus defeated. *Frisbie v. Whitney*, 9 Wall., 187. *Hutchings v. Low*, 15 Ibid., 77.

But such occupation and improvement do confer an inchoate right, as against other citizens, which the land officers are bound to respect, and which will be protected by the courts. Ibid.

A person occupying public lands, whether surveyed or unsurveyed, under the pre-emption laws, acquires a right to the possession from the moment of settlement, and the courts will protect such rights of possession, subject to the jurisdiction of the register and receiver to settle questions of conflicting boundary, or priority of settlement. *Cohwell v. Smith*, Wash. T. Rep., 109.

Under the act of 4 September, 1841, (2 Bright. Dig., 473,) a conveyance by a pre-emptor, before patent issued, is void, and can operate neither by way of grant nor estoppel. *Kellom v. Easley*, 2 Ab., C. C. 559. s. c. 1, Dill., 281.

The act of 14 August, 1848, organizing the Territory of Oregon, did not extend to it any part of the pre-emption laws. *Stark v. Starr*, 6 Wall., 402. s. c. 1 Saw., 15. s. p. *Martino v. T^h Vault*, 1 Oregon, 77. *Lounsedale v. City of Portland*, Ibid, 381. s. c. 1 Deady 1. *Chapman v. School District*, Ibid, 108.

The fund arising from the sale of lands, pre-empted for seats of justice, under the act of 26th May, 1824, (1 Bright. Dig., 469,) is a trust-fund to be specially applied to the purposes contemplated in the grant; it is not subject to the ordinary drafts upon the county treasury. *Davis v. Muscatine County*, Morris. (Iowa) 161.

Settlers under the pre-emption and homestead laws, have an inchoate right which they should be permitted to perfect into a legal title. *Litchfield v. The Register*, 1 Wool., 299.

A pre-emption entry, not affected by a radical infirmity, will be upheld against a subsequent purchaser. *Root v. Shields*, 1 Wool., 340.

Lands included within the limits of an incorporated town are not subject to entry under the pre-emption law of 1841. Ibid.

The extent of lands which may be included in a city, is not limited by the act 23d May, 1844, (5 Stat., 657.) Ibid.

The provision of the 4th section of the act 3d March, 1843, prohibiting the making of two declaratory statements by the same pre-emptor, is confined to lands subject to private entry. *Johnson v. Towsley*, 13 Wall., 72.

A declaratory statement, under that act is valid, if made at any time before another person commences a settlement, or files a declaration. Ibid.

If a party be deprived of his right of pre-emption, by an erroneous construction of the statute by the land department, he may have relief in equity. *Samson v. Smiley*, 13 Wall., 91.

The act of 4th September, 1841, only prohibits the assignment of a pre-emption right; a pre-emptor who has entered the land, and is the owner in good faith may sell before patent. *Myers v. Croft*, 13. Wall., 291.

TITLE IV.—RAILROAD GRANTS.

I. IN GENERAL.

No. 394.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 24, 1875.

REGISTERS AND RECEIVERS UNITED STATES LAND OFFICES.

GENTLEMEN:—The following pages, comprising circular instructions relating to the adjustment of railroad grants, embrace the various regulations now in force under the rules and practice of the Department respecting the subject; together with forms for selection, verification of lists and proper certification, and tables showing the dates of the respective granting acts, with a reference by volume and page to the statutes containing the same; also the dates at which title vested in the respective grantees, so far as obtained from the best information known to the Department.

These instructions are now communicated for the guidance of District Officers, Surveyors-General, Executives and Agents of States, Officers of Railroad Corporations, and others having an interest in the matters recited.

You will be governed in your official action by the regulations therein prescribed.

Very respectfully,
S. S. BURDETT, *Commissioner*.

DEPARTMENT OF THE INTERIOR,*
Washington, D. C., 11 September, 1873.

SIR:—I have received your letter of the 9th instant, suggesting a change in the 7th section of the circular issued by your Office on the 24th January, 1867, in regard to selections of lands in satisfaction of railroad and other congressional grants. The then Secretary, Mr. Browning, held that the 21st section of the act approved 2d July, 1864, (18 Stat., 365,) applied only to the lands granted by that act, and the circular conformed to his ruling.

The Supreme Court of the United States, at its December term, 1872, decided, in the cases of the Kansas Pacific Railway Company v. John H. Prescott, and the same Company v. Charles C. Culp, that said act applied also to the lands granted by the original act of July 1st, 1862.

*Reprint of circular for Oct. 15, 1873, in modification of circular of Jan. 24, 1867.

I fully concur in your opinion that the circular should be made to conform to this decision, and you are authorized to make the required change.

The papers are herewith returned.

I am, sir, very respectfully, your obedient servant,

B. R. COWEN, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

GRANTS FROM CONGRESS TO STATES AND CORPORATIONS.

By the first section of the act of Congress approved July 1, 1864, (Statutes 1863-64, page 335, chap. 196), it is provided that from and after the passage of *that* act, "in the location of lands by States and corporations, under grants from Congress for railroads and other purposes (except for agricultural colleges), the Registers and Receivers of the Land-Offices for the several States and Territories, in the districts where such lands may be located, for their services therein, shall be entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, to be paid by the State or corporation making such location; the same to be accounted for in the same manner as fees and commissions on warrants and pre-emption locations, with limitations as to maximums of salary prescribed by existing laws, in accordance with such instructions as shall be given by the Commissioner of the General Land-Office." (Revised Statutes, section 2238, seventh clause; *Ibid.*, sections 2240 and 2241.)

1st. Under this law the Registers and Receivers are *each* entitled to receive a fee of one dollar for each final location of one hundred and sixty acres, or any quantity approximate thereto, when the deficit is less than forty acres.

2d. When the several quantities shall have been definitely ascertained by you to inure to the grant, as hereinafter prescribed, the fees will then be due thereon.

3d. The State through its grantee, or the grantee, as the case may be, is required to file with the Register and Receiver of the proper Land-Office descriptive lists of the tracts of land claimed as inuring under the grant within sections of — miles each along the line of route, on both sides thereof, to be dated and verified by the signature of the selecting agent.

For agent's certificate, to be attached to each list, see Form A.

The party appearing as the agent of the grantee must file with the Register and Receiver written and satisfactory evidence, under seal, showing his authority to act in the premises.

In the preparation of the descriptive lists, the Register and Receiver will afford the agent all reasonable facilities, taking care, however, not to interrupt the current public business.

The lists must be carefully and critically examined by the Register and Receiver, and their accuracy tested by the plats and records of their office. When so examined and tested, and found correct in all respects, they will become final locations, and you will, on the payment of the requisite fees to the Receiver, so certify at the foot of each list, according to Form B.

After such lists have been examined and you have attached your certificate thereto, the same will be consecutively numbered, commencing with No. 1, for each railroad or separate grant. Under the payment of the fees and certifications of the lists by you, the Register will post the selections in the Tract Book after the following manner:

"Selected _____, 18—, by A. B., agent for the _____ Rail _____ Co., act —, list No. —;" and on the plats he will mark the tracts so selected "_____ R. R."

After the selections are properly posted and marked on the plats, the lists will be transmitted to this office, accompanied by the evidence of the agent's appointment.

It is required that clear lists of approvals shall in every case be made out by you, or required of the selecting agents, after your examination of the tracts which you are prepared to certify, showing clearly and without erasure the description of the lands and the area of each tract; also the aggregate area, properly footed in the columns, and set forth in the certificate.

For rejected selections you will then require a new application and list, with tender of fees, upon which you will note opposite each tract the objections appearing upon your records, and indorse thereon in full your reasons for refusing to certify the same.

Should the agent appeal, you will allow him to file the points of exception to your ruling in writing, properly drawn and dated, which, when completed, you will forward to this office. No erasures should appear in such lists. The rejection will sufficiently appear from your notes and indorsements, and, if finally admitted, the lists will then be in complete and perfect order for filing. To secure uniformity, and to make the lists convenient for binding, properly ruled blanks will be furnished upon application.

Lists containing erasures received at this office will not be filed, but will be returned to you for perfection.

4th. The fees will be due in all cases where the service may have been rendered *subsequent* to the passage of said act of 1864.

5th. The Receiver will account for the fees thus paid in his monthly and quarterly accounts, specially setting forth in the same the particular case or cases on which such fees had accrued, giving the name of road, number and date of the list of selections for which they had been paid.

6th. By joint resolution No. 10, of January 30, 1865, "mineral lands" are not embraced in the grants made at the first session of the Thirty-eighth Congress, unless otherwise specially provided in the act or acts making the grants. (Revised Statutes, section 2346.)

PACIFIC RAILROADS.

Acts approved July 1, 1862, and July 2, 1864.

7th. By section 21 of the latter act, these companies are required to pay cost of "surveying, selecting, and conveying" the lands, *in addition* to the Register and Receiver's fees exacted by the act of July 1, 1864, before mentioned. This cost of surveying and conveying is, by the decision of the United States Supreme Court at the December term,

1872, applicable to all the lands granted by acts of July 1, 1862, and July 2, 1864. Therefore, the "cost" will be assessed and collected on all the lands within twenty miles from the line of the road, where the grant is under both acts.

To ascertain the cost of "surveying," which includes both *surveying the field* and *office work*, the company will apply to the Surveyor General of the State or Territory in which the lands are situated. Upon ascertaining the sums due for surveying and office work for the "section or sections of road" for which selections have been or are to be made, a deposit of those sums must be made, to the credit of the Treasurer of the United States, with an authorized depository. The duplicate of deposit must be filed with the Surveyor General; whereupon he will transmit to the Register and Receiver of the proper Land-Office his certificate of such payment having been made, specifying how much was for surveying and how much for office work, as per Form C.

The Surveyor General's certificate, together with the triplicate certificate of deposit and the evidence of the agent's appointment, must accompany the lists of selection when transmitted by you to this office.

8th. Herewith is a form of title-page to be prefixed to the List of Selection.

Let me here call your special attention to the necessity of *great care* in the examination and testing of these lists, so that all conflicts may be avoided and improper selections be excluded, and that the verified schedules may be absolutely accurate, thus avoiding embarrassment and delay to all concerned.

9th. Pacific Railroad act, July 2, 1864.—It is provided in section 4 that the word "mineral," when it occurs in that act, shall not be held to include iron and coal. Therefore, iron and coal lands are subject to selection by the Pacific Railroads; but all other minerals are expressly excluded from the grant, and must necessarily be so from all selections you may certify to this office. When the verified lists are received at the General Land-Office, prepared and certified as above required, such definitive action as the law prescribes will be here taken with the view to invest the grantee with a complete title.

These instructions will supersede those of May 30, 1866, Circular No. 9, and of January 24, 1867, Circular No. 15. The forms attached hereto, which are made a part hereof, will be followed in certifying to maps and lists, where the same may be applicable.

The following is an Act of Congress, approved June 22, 1874, for the relief of settlers on railroad lands. [Part II., No. 120.]*

By reference to the foregoing it will be perceived that an inducement is offered to such railroad companies as may be found entitled to lands held by actual settlers under the pre-emption or homestead laws to relinquish in favor of the settlers, and receive other lands in lieu of those surrendered.

Upon the filing of such relinquishment this Office is authorized to recognize the filing or entry of the settler in the same manner as if the land had not been granted to the railroad company.

To facilitate the adjustment of conflicting claims and give effect to the provisions of the act, the following rules are established:

* The part of this circular relating to the act of June 22, 1874, was published as a separate circular under date of August 12, 1874, and in preparing this work was inserted in its proper place and marked No. 421. See No. 422.

1. When the superior right of the company is ascertained, and it is found that the claim of the settler is such that it would be admitted were the railroad claim extinguished, this Office will, in all practicable cases, direct the attention of the officers of the company to the fact, and request an explicit answer whether or not the land will be relinquished.

At the same time it will be well for the party interested to seek for himself the relief indicated by direct application to the railroad authorities, and thereby aid in securing a speedy and satisfactory adjustment.

2. Relinquishment may be made by a simple waiver of claim where the patent or its equivalent has not been issued in behalf of the company; but where title has passed, formal reconveyance will be required, as in other cases of the surrender of patents.

3. When making relinquishment, the company will be permitted to name the tract selected as indemnity; and in order that conflict with pending applications may be avoided, such relinquishment and selection should be filed with the Register and Receiver, and be noted upon their records, before transmission to this office.

But in case the company desires to relinquish at once in favor of the settler, and trust to future selections for indemnity, such relinquishment may be sent direct to this Office, and upon its receipt will be noted on the books, and the claim of the settler will be immediately released from suspension.

4. The selections must be of lands, not mineral, within the limits of the grant and withdrawal, free from other claims, and not reserved or otherwise appropriated at date of selection.

5. Where fees have been paid upon the original selections they will be applied to the indemnity. Where tracts not yet formally selected are relinquished, fees will be charged upon the indemnity selections.

6. The selections will be reported by the Register and Receiver in the same manner as original selections, with a reference to the act by its date and title; and opposite each tract annotation will be made of the tract surrendered, and the name of the settler in whose favor it is relinquished, with the number of his entry or filing. (See Forms D and E.)

Properly ruled blanks will be furnished for convenience in making the selection.

As the act is not mandatory upon the companies, but simply provides a mode of adjustment depending upon their voluntary action, and as the relief proposed is vital to many settlers, who through error resulting from various causes have made homes upon the lands granted, it is hoped that by a liberal and mutual spirit of compromise and concession on the part of settlers and railroad officials its beneficent provisions may be made available, and substantial advantages to all may be secured at small cost and trouble to the parties concerned; and although the adjustments will involve this Office in a large amount of labor, it will be cheerfully undertaken for the purpose of accomplishing a result so desirable.

Form for Title-page.

____ OF _____,
UNITED STATES LAND OFFICE,

____, _____,
____, 18__.

The _____, under and by virtue of the acts of Congress entitled "____," and under and in pursuance of the rules and regulations prescribed by the Commissioner of the General Land-Office, hereby makes and files the following list of selections of public lands claimed by the said company as inuring to it, and to which it is entitled under and by virtue of the grants and provisions of the said acts of Congress, and the location of the line of route of the _____ of said company; being for the _____ section (____ miles) of the same, commencing at _____ and ending _____; the selections being particularly described as follows, to wit: _____.

(A.)

____ OF _____,
County of _____, ss:

I, _____, being duly sworn, depose and say that I am the land agent of the _____, formerly the _____; that the foregoing list of lands which I hereby select, is a correct list of a portion of the public lands claimed by the said _____ company as inuring to _____, to aid in the construction of the _____ from _____, for which a grant of lands was made by the acts of Congress approved; that the said lands are vacant, unappropriated, and are not interdicted mineral nor reserved lands, and are of the character contemplated by the grant, being within the limits of _____ miles on each side of the line of route for a continuous distance of _____ miles, being for _____ section of said road, starting from _____ and ending _____. [L. S.]

Sworn and subscribed before me this _____ day of _____, _____.

NOTE.—This affidavit may be made before either the Register or Receiver of the United States Land-Office.

(B.)

UNITED STATES LAND OFFICE,

____, _____,
____, 18__.

We hereby certify that we have carefully and critically examined the foregoing list of lands, claimed by the _____, under the grant to the _____, by acts of Congress approved _____, and selected _____ by _____, the duly authorized agent; and we have tested the accuracy of said lists by the plats and records of this Office, and that we find the same to be correct. And we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limit of _____ miles on each side; and that the same are not, nor is any part thereof, returned and denominated as mineral land or lands, nor claimed as swamp lands; nor is there any homestead, pre-emption, State, or other valid claim to any portion of said lands on file or record in this office.

We further certify that the foregoing list shows an assessment of the fees payable to us allowed by the act of Congress approved July 1, 1864, and contemplated by the circular of instructions dated October 15, 1873, addressed by the Commissioner of the General Land-Office to Registers and Receivers of the United States Land-Offices; and that the said company have paid to the undersigned, the Receiver, the full sum of _____, in full payment and discharge of said fees.

_____, _____, *Register.*
 _____, _____, *Receiver.*

(C.)

UNITED STATES SURVEYOR GENERAL'S OFFICE,

_____, _____,
 _____, 18—.

I, _____, Surveyor General for the United States in and for the _____, hereby report and certify that the _____ has this day filed with me, at _____, a duplicate certificate of deposit, No. —, dated _____ of the _____, to the credit of the Treasurer of the United States, showing that the sum of \$_____ has been deposited as cost of survey and \$_____ for office work, and that the said sums are the correct amount of the cost of survey and office work for the lands mentioned and described in the list of lands hereto annexed, to the extent of said list.

Survey, \$_____.

Office work, \$_____.

In testimony whereof I have hereunto set my hand and official seal.

_____, _____, *Surveyor General.*

(D.)

UNITED STATES LAND OFFICE,

_____, _____,
 _____, 18—.

I, _____, agent of the _____ Rail— Company, hereby apply to select the following described lands, in lieu of lands inuring to said company, under act of _____, and surrendered by said company in favor of actual settlers thereon, as provided by act of June 22, 1874, entitled "An act for the relief of settlers on railroad lands."

(E.)

UNITED STATES LAND OFFICE,

_____, _____,
 _____, 18—.

We hereby certify that we have carefully and critically examined the foregoing list of lands claimed by the _____ Rail— Company in lieu of lands heretofore granted for said company, and selected by _____, the duly authorized agent, and that we find the same to be correct; and we further certify that the filing of said list is allowed and approved, and that the whole of said lands are surveyed public lands of the United States, and within the limits of _____ miles.

We further certify that the foregoing list shows an assessment of the fees payable to us under the act of July 1, 1864, and that the said com-

pany have paid to the undersigned, the Receiver, the full sum of —, in full payment of said fees.

—, Register.

—, Receiver.

Certificates for Maps of the Surveys and Permanent Locations, etc.

Form No. 1. Of engineer's affidavit to map of definite location.

Form No. 2. Of president and engineer's certificate to same.

Form No. 3. Of engineer's affidavit to map of completed portion of railroad.

Form No. 4. Of president's certificate to same.

Form No. 5. Of engineer's affidavit to map of definite location where grant was made to a State or Territory.

Form No. 6. Of certificate of governor of State or Territory to map of definite location.

Form No. 7. Of certificate of governor to map of completed portion of railroad.

Nos. 1, 2, 3, and 4 to be used when grant was direct to the railroad company.

Nos. 1, 3, 4, 5, 6, and 7 to be used when grant was made to the State or Territory.

(No. 1.)

— OF —,

County of —, ss:

—, of —, in said county and — being duly sworn, deposeth and says, that he is the chief engineer of the —, and has been such chief engineer since the —; that during the period above named — and — were employed, and by this deponent as chief engineer for said railroad company, as deputy or division engineers; that the said engineers, as shown by their field-notes, verified under oath, did actually survey and mark upon the ground the line or route of the — from — to —, in the sections and at the times respectively designated by dates, which are included between the flag-staffs upon and along the line of route of said railroad as delineated on this map, showing the line of the public survey in connection with the surveyed line of the route; and that the acts of said deputy or division engineers in the premises were duly approved and accepted on behalf of said company by this deponent as said chief engineer of the —.

—, Chief Engineer.

Sworn and subscribed this — day of —, before me.

[SEAL.]

—, Notary Public.

NOTE.—The map of location *must*, as shown in the above form, in all cases show the lines of the public survey in connection with the line of route.

(No. 2.)

OFFICE OF THE —,

—,

—, 18—.

It is hereby certified that, in pursuance of the act of Congress approved July 1, 1862, entitled "An act to aid in the construction of a

railroad and telegraph line from the Missouri River to the Pacific Ocean, and to secure to the Government the use of the same for postal, military, and other purposes," wherein a grant of land is made by the _____ section to the _____, who are thereby authorized to construct a railroad and telegraph line from _____, and the act of July 2, 1864, amendatory thereof, which _____ to construct said railroad, this map shows the location of the line or route of the _____ from _____ to _____, being a part of the line or route of said railroad as definitely fixed, in compliance with said acts of Congress and in pursuance of the resolution of the board of directors of said company, passed on the _____; and that the dates of the field-work thereof are truly indicated along the line, from station to station, upon this map.

In testimony whereof the _____ has caused the same to be signed by its president and engineer, and has attached hereunto its corporate seal at _____, on the day and year first above written.

[SEAL.]

_____, President.

_____, Chief Engineer.

Attest: _____,
Secretary.

(No. 3.)

_____ OF _____,

_____ County of _____, ss:

_____, of _____, in said county and _____, being duly sworn, depose and says that he is the chief engineer of the said railroad from _____ to _____, being for _____ section of _____ miles, as shown by the line of route in connection with the lines of the public surveys on this map; that it has been completed and equipped as required by law, and that this line of route shows the correct location of the said railroad.

[SEAL.]

_____, Chief Engineer.

Sworn and subscribed this _____ day of _____, before me.

[SEAL.]

_____, Notary Public.

(No. 4.)

It is hereby certified that _____ is the chief engineer of the _____, and that the location of the road as represented on this map is correct and approved by the company; and also that the said portion of the said road has been completed and equipped in all respects as required by law.

_____, President. [SEAL.]

Attest: _____,
Secretary.

[SEAL.]

(No. 5.)

OFFICE OF THE _____,

It is hereby certified that, in pursuance of the act of the legislative assembly of the _____, approved _____, entitled "_____" this map shows, in connection with the public surveys, the actually sur-

veyed line of route of the ——— from ——— to ———, as definitely fixed, in compliance with the act of Congress approved ———, and in pursuance of the resolution of the board of directors of said railroad company, passed on the ——— day of ———; and that the dates of the field-work thereof are truly indicated along the line, from station to station, upon this map.

In testimony whereof the ——— has hereunto attached its corporate seal and caused the same to be signed by the president and engineer, at ———, in the day and year first above written.

[SEAL.]

————, *President.*

————, *Chief Engineer.*

Attest : ———,
Secretary,

(No. 6.)

I, ———, governor of the ———, do hereby certify that this plat or map of the ——— has been duly filed in my office by the railroad company, and shows, in connection with the public surveys, the location of the line of route as actually surveyed of the ——— "from ——— to ———," as definitely fixed in compliance with the act of Congress approved ———, entitled "An act ———;" and with the act of the legislative assembly of the ———, approved ———, entitled "———," granting certain lands to the railroad herein named.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the ———.

Done at ———, this ——— day of ———.

[SEAL.]

————, *Governor.*

Attest : ———,
Secretary of ———.

(No. 7.)

EXECUTIVE OFFICE, ———, ———.

I, ———, governor of the ———, do hereby certify that this plat or map of the ——— has been duly filed in my office by the said ——— company, and shows that portion of the said railroad commencing at ——— and ending at ———, which has been completed and equipped as required by the act of Congress approved ———, and the act of the legislative assembly of the ———, approved ———, entitled "———," granting lands to the said railroad company.

In testimony whereof I have hereunto set my hand and caused to be affixed the great seal of the ———.

Done at ———, this ——— day of ———.

[SEAL.]

————, *Governor.*

Attest : ———,
Secretary of ———.

REGULATIONS RESPECTING CONFLICTING CLAIMS UPON
RAILROAD LANDS.

Under the provisions of the acts of Congress granting lands in aid of construction of railroads, wherein there are exempted from such grants the lands to which a valid right of pre-emption or homestead had attached at the time when the grant may have become effective, the honorable Secretary of the Interior has decided that the lands to which such pre-emption or homestead claim or right had attached, and the claim has subsequently been abandoned, do not inure to the railroad grant but revert to the United States.

A pre-emption or homestead claim of record is, of course, *prima facie* evidence of a valid right, yet it may occur that such claim had a fraudulent inception, or that the claimant had given up and actually abandoned his claim at the date when the grant became effective. In such cases the Department holds that there exists no valid pre-emption or homestead claim, and that the land inures to the grantee. It must be understood, however, that a railroad grant cannot take land covered by a pre-emption or homestead unless it is clearly shown that the same was abandoned by the party at the time the grant attached.

In view of these rulings the following is communicated for your information and government, to the end that the rights of all parties may be duly considered and protected:

First. In relation to pre-emption claims. The pre-emption laws require that a person must be over the age of twenty-one years, or the head of a family; a citizen of the United States, or a person who has filed a declaration of intention to become such, etc.; and also that he must have settled upon the land claimed; thus imposing conditions pre-requisite to the filing of a claim.

Second. In relation to homestead claims. The law requires that a person must be over twenty-one years of age, or the head of a family; a citizen of the United States, or one who has declared his intention to become such, etc.; and under the first and third sections of the amendatory act of March 21, 1864, the persons claiming the benefit of said sections must make settlement upon the tracts before they can obtain the benefit of said sections. Therefore, as the fraudulent character of a pre-emption or homestead claim in its inception may be brought in question, it is right that the parties in interest should have an opportunity, in all cases, to be heard. With this view you are required—

Third. When application is made by the agents of a railroad company to select lands on which homestead entries or pre-emption filings are of record and uncanceled, but which they allege were either fraudulent in their inception or abandoned prior to the time when the grant for the railroad attached, or where parties apply to contest and set aside homestead entries or pre-emption filings on lands withdrawn for railroads, you will order hearings to determine the rights of the respective parties, giving them at least thirty days' notice, in writing, of the time and place of such hearing, if their whereabouts are known, or if they can be reached by such notice. If they cannot be found, you will cause such notice to be given by publication at least once a week for four consecutive weeks in the newspaper having the largest circulation in the vicinity of the land.

Fourth. Where application is made by a railroad company to select land on which homesteads or pre-emptions have heretofore been made

and cancelled for abandonment or relinquishment, and no other claim has since been allowed thereon by direction of this Office, you will permit the company to file with their applications evidence of the fact that the land was abandoned or relinquished prior to the date when the right of the railroad company attached under the grant.

By the operation of law limiting the period within which proof and payment must be made in pre-emption cases, such claims are constantly expiring, the settler not appearing within such time to consummate his entry.

These expired filings are classed with those actually abandoned or relinquished, and fall within the above instructions, unless explicit allegations are filed tending to show good faith in the settler until the definite location of the road, and that the failure to comply with the law dates from a subsequent period. In these latter cases hearings are required to ascertain the facts.

Ex parte affidavits forwarded from district offices concerning this class of lands, and purporting to have been filed by various parties, agents, and attorneys of railroad companies for the purpose of proving abandonment by pre-emption claimants prior to the definite location of their respective roads, constitute no part of the files required for your office or for the General Land-Office.

They cannot, therefore, be received, except when presented with the proper lists embodying the "application to select" the lands as a part of the grant to the railroad company, unless expressly relating to lands included in lists already on file, and filed for the purpose of clearing such lists from suspension, in which case they may be received by you and transmitted, with a particular specification of the lists to which they refer.

You will, accordingly, refuse hereafter to receive such papers, and if they reach you by mail you will return them to the parties offering them, except when filed as provided for aforesaid.

Fifth. The inquiry at the hearing must be to ascertain the status of the prior filing or entry, upon which the subsequent claim is based, at the *date the right of the company attached*.

The honorable Secretary of the Interior decided, under date of July 17, 1873, in the matter of the Missouri, Kansas and Texas Railroad Company, in modification of his decision of September 3, 1872, in the case of Nickell *et al.* v. the St. Joseph and Denver City Railroad Company, that where, under the interpretation of the rulings of the Department, second entries or filings have been allowed within the limits of any railroad upon lands previously covered by homestead entries or pre-emption filings after the cancellation of the same, such second entries or filings are affected by the modification of previous decisions; and that not until patents have actually been executed can the cases be considered as *res adjudicatee*.

At the hearings your inquiries should be directed to the personal qualifications of the original claimant, and his compliance with the law in the matter of settlement and cultivation. You will be careful that all material facts are brought out, and, if necessary to this end, you will yourselves examine and question the witnesses. The record of the hearing should be prefaced by evidence of notice to all parties in interest, as required in other contested cases.

At the close of the hearing you will forward all the papers to this office, with your joint opinion thereon.

Parties initiating a contest must make provision for defraying the expenses thereof, but when the case comes before you for trial you can apportion the costs according to the equities of each case.

You will in no case allow a filing or entry on the class of lands covered by these regulations without having first had a hearing thereunder.

Whenever an application to file or enter is presented, which it becomes your duty, upon examination, to reject, you will indorse upon such application the date of its presentation and your reasons for rejection; and upon appeal being taken from your decision in the manner prescribed by the regulations of the department, you will forward the rejected application as a basis for your report to this office, together with the appeal and other papers which may be filed with you for that purpose.

Your report should set forth in full the status of the land as shown by your records, including all filings, entries, remarks and notes found thereon, or such reference to the same as will present the entire case to the attention of this office.

LAND GRANTS FOR RAILROAD AND WAGON-ROAD PURPOSES.

Statement exhibiting land concessions by acts of Congress to States and corporations for railroad and military wagon-road purposes from the year 1850 to June 30, 1875.

States.	Date of laws.	Statutes.	Page.	Name of Road.	Mile limits.	Estimated quantity embraced in the limits of the grant	Number of acres certified or patented up to June 30, 1875.....
Illinois.....	Sept. 20, 1850	9 496		Illinois Central.....	6 and 15	2,595,063.00	2,595,063.00
Do.....	Sept. 20, 1850	9 496		Mobile and Chicago.....	6 and 15	737,130.29	737,130.29
Mississippi.....	Sept. 20, 1850	9 496		Mobile and Ohio River.....	6 and 15	*1,004,640.00	198,027.23
Do.....	Aug. 11, 1856	11 30		Vicksburg and Meridian.....	6 and 15	404,800.00	419,528.44
Do.....	Aug. 11, 1856	11 30		Gulf and Ship Island.....	6 and 15	†552,800.00	334,622.99
Alabama.....	Sept. 20, 1850	9 496		Mobile and Ohio River.....	6 and 15	230,400.00	438,277.45
Do.....	May 17, 1856	11 15		Alabama and Florida.....	6 and 15	†419,920.00	
Do.....	June 3, 1856	11 17		Selma, Rome and Dalton, formerly Alabama and Tennessee.....	6 and 15	481,920.00	
Do.....	May 23, 1872	17 159		Act confirming lands heretofore certified to the State for the Alabama and Tennessee.....	6 and 15		
Do.....	June 3, 1856	11 17		Coosa and Tennessee.....	6 and 15	†132,480.00	67,794.96
Do.....	June 3, 1856	11 17		Mobile and Girard.....	6 and 15	†840,880.00	504,145.95
Do.....	June 3, 1856	11 17		Alabama and Chattanooga, formerly the Northeastern and Southwestern and Wills Valley.....	6 and 15	897,920.00	536,762.68
Do.....	Apr. 10, 1859	16 45		Act to renew certain grants of land to the State of Alabama.....	6 and 15	578,000.00	443,065.70
Florida.....	June 3, 1856	11 15		South and North Alabama, formerly the Tennessee and Alabama Central Florida Railroad.....	6 and 15	442,542.14	291,964.17
Do.....	May 17, 1856	11 15		Florida and Alabama.....	6 and 15	185,688.00	185,688.00
Do.....	May 17, 1856	11 15		Pensacola and Georgia.....	6 and 15	†1,668,720.87	1,275,312.93
Do.....	May 17, 1856	11 15		Florida, Atlantic and Gulf Central.....	6 and 15	†183,153.99	37,668.29
Louisiana.....	June 3, 1856	11 18		North Louisiana and Texas, formerly the Vicksburg and Shreveport.....	6 and 15	610,880.00	833,211.70
Do.....	June 3, 1856	11 18		New Orleans, Opelousas and Great Western.....	6 and 15	967,940.00	719,108.75
Do.....	July 14, 1870	16 277		Act declaring forfeited to the United States all the lands not lawfully disposed of by the State.....	6 and 15		
Arkansas.....	Feb. 9, 1863	10 153		Cairo and Fulton.....	6 and 15	1,160,867.00	1,115,498.41
Do.....	July 23, 1866	14 338		do.....	Additional 5	1,040,000.00	194,594.63
Do.....	May 6, 1870	16 376		Resolution extending time for completion of first twenty miles of road.....	8 and 15	438,646.80	197,238.61
Do.....	Feb. 9, 1863	10 156		Memphis and Little Rock.....	Additional 5	360,589.00	6,709.19
Do.....	July 23, 1866	14 338		do.....			

Arkansas...	Feb. 9, 1832	10	153	Little Rock and Fort Smith.			550,525.24	550,525.18
Do.....	July 28, 1832	14	328	do.....		Additional 5	468,771.00	304,468.70
Do.....	Apr. 10, 1833	16	46	Act extending time for completion of first twenty miles of road.				
Do.....	Mar. 8, 1870	70		Act repealing provision in act of April 10, 1833, as to mode of sales of land.				
Missouri.....	July 4, 1838	14	81	Iron Mountain.....		10 and 20	1564,000.00	
Do.....	June 10, 1833	10	8	Hannibal and Saint Joseph.....		6 and 15	781,944.83	659,031.65
Do.....	June 10, 1832	10	8	Pacific and Southwest Branch.....		6 and 15	1,161,235.07	1,161,204.51
Do.....	Feb. 9, 1833	10	155	Cairo and Fulton.....		6 and 15	219,292.31	63,540.11
Iowa.....	July 28, 1838	14	328	do.....		Additional 5	1,247,718.00	
Do.....	July 4, 1838	14	81	Saint Louis and Iron Mountain.....		10 and 20	1640,000.00	
Do.....	May 15, 1856	11	9	Burlington and Missouri River.....		6 and 15	948,643.66	291,725.00
Do.....	June 2, 1854	13	96	do.....		20		97,307.98
Do.....	Feb. 10, 1838	14	349	Resolution extending time for completion of road.		6 and 15	1,251,181.60	482,712.49
Do.....	May 15, 1856	11	9	Chicago, Rock Island and Pacific, formerly Mississippi and Missouri.....		20		161,684.08
Do.....	June 2, 1854	13	96	Act to quiet the title to certain lands in the State of Iowa.		6 and 15	1,298,739.00	778,909.17
Do.....	Jan. 31, 1873	17	421	Cedar Rapids and Missouri River.....		30	353,832.03	353,832.03
Do.....	May 15, 1856	11	9	Iowa Falls and Sioux City, formerly Dubuque and Sioux City.		6 and 15	1,256,163.05	1,229,622.71
Do.....	May 2, 1854	13	98	Authorizes the Dubuque and Sioux City Company to change their line of road.				
Do.....	Mar. 2, 1858	15	38	Act extending time for completion of road, to January 1, 1872.		10 and 20	1,536,000.00	137,572.97
Do.....	May 12, 1854	13	72	McGregor and Missouri River.....		10 and 20	124,400.00	407,764.21
Michigan.....	May 12, 1854	13	72	Sioux City and Saint Paul.....		6 and 15	355,430.19	80,893.75
Do.....	June 3, 1856	11	21	Detroit and Milwaukee.....		6 and 15	312,384.32	6,420.68
Do.....	June 3, 1856	11	21	Port Huron and Milwaukee.....		6 and 15	1,062,469.19	742,940.56
Do.....	July 3, 1856	14	78	Jackson, Lansing and Saginaw.....				
Do.....	July 2, 1857	14	425	Act extending time for completion of road seven years, &c.				
Do.....	Mar. 2, 1871	16	536	Act authorizing change of northern terminus from Traverse Bay to Straits of Mackinaw and for other purposes.				
Do.....	June 3, 1856	11	21	Flint and Pere Marquette.....		6 and 15	586,828.73	512,523.38
Do.....	Feb. 17, 1855	13	563	Resolution extending time for completion of road.				
Do.....	July 3, 1856	14	78	Act authorizing the company to change its western terminus of road.				
Do.....	Mar. 8, 1871	16	532	Act extending time for completion of road five years.....				
Michigan.....	June 3, 1856	11	21	Grand Rapids and Indiana.....		6 and 15	629,192.63	629,192.63
Do.....	June 7, 1854	13	119	Grand Rapids and Indiana from Fort Wayne, Ind., to Grand Rapids.		6 and 20	581,200.00	215,431.97
Do.....	Mar. 8, 1865	13	539	Act extending time for completion of road eight years.....				

*In the adjustment of this grant the road was treated as an entirety and without reference to the State line; hence, Alabama has approved to her more and Mississippi less land than they would appear to be entitled to in proportion to the length of road line in the respective States.

†No evidence of the construction of any part of these roads, as required by the act, has been filed in the General Land Office, but the lands have not been restored to the mass of public lands, Congress having taken no action to that end.

Statement exhibiting land concessions by acts of Congress to States and corporations, &c.—Continued.

States.	Date of laws.	Statutes.	Page.	Name of Road.	Mile limits.	Estimated quantity embraced in the limits of the grant.....	Number of acres certified or patented up to June 30, 1875
Michigan.....	June 3, 1856	11	21	Marquette, Houghton and Ontonagon.....	6 and 15	562,515.24	452,707.47
Do.....	Mar. 3, 1855	13	521	do.....	20		
Do.....	May 20, 1868	15	252	Resolution extending time for completion of road, with certain restrictions			
Do.....	Apr. 20, 1871	17	643	Act authorizing the Houghton and Ontonagon Railroad Company to survey and locate anew a part of its road.	300 sections,	128,000.00	128,000.00
Do.....	Mar. 3, 1855	13	521	Ray de Noquet and Marquette.....	6 and 15	564,480.00	515,356.75
Do (Res)	July 5, 1862	12	620	Chicago and Northwestern.....	20		
Do.....	Mar. 3, 1855	13	521	do.....			
Do.....	May 23, 1872	17	160	Act authorizing change of route in Michigan.....	6 and 15	999,933.38	798,912.51
Wisconsin.....	June 3, 1856	11	20	West Wisconsin, formerly the La Crosse and Milwaukee and Tomah and Saint Croix Railroads.	10 and 20		
Do.....	May 5, 1864	13	68	West Wisconsin.....			
Do.....	Mar. 3, 1873	17	634	Act to quiet the title to the lands of the settlers on lands claimed by the West Wisconsin Railway Company.....			
Do.....	June 3, 1856	11	20	Saint Croix and Lake Superior, and branch to Bayfield.....	6 and 15	524,714.95	524,718.15
Do.....	May 5, 1864	13	66	do.....	10 and 20	318,757.74	318,740.80
Do.....	June 3, 1856	11	20	Madison and Portage, formerly that portion of the old La Crosse and Milwaukee Railroad between those points.	6 and 15	350,000.00	
Do.....	July 27, 1868	15	238	Wisconsin Railroad Farm Mortgage Company, formerly that portion of the old La Crosse and Milwaukee Railroad between Portage City and Tomah.		215,000.00	
Do.....	June 3, 1865	11	20	Chicago and Northwestern.....	6 and 15		
Do.....	Apr. 25, 1862	12	618	Resolution authorizing change of route in Wisconsin and selection of lands.	6 and 15	600,000.00	546,322.91
Do.....	Mar. 3, 1865	13	520	Act extending time for completion of road five years.....			
Do.....	Mar. 3, 1869	15	307	Authorizing selection of lands along the full extent of original route of road, &c.			
Do.....	May 5, 1864	13	66	Wisconsin Central, formerly the Portage, Winnebago and Superior.	10 and 20	1,800,000.00	398,355.73
Do.....	June 21, 1865	14	380	Resolution explanatory of the act of May 5, 1864, and authorizing certain changes of width in accordance with the act of the State legislature.			
Do.....	Apr. 9, 1874	18	28	An act to extend the time for completion of road to December 31, 1876.			
Do.....	Mar. 3, 1875	18	511	An act authorizing the company to straighten the line of their road between Portage City and Stevens Point.			

Minnesota.....	Mar. 3, 1867	11	103	Saint Paul and Pacific.....	6 and 15 } 1,248,688.96	1,217,827.21
Do.....	Mar. 3, 1865	13	620	do.....	10 and 20 } 1,248,688.96	
Do.....	Mar. 3, 1873	17	631	Act extending time for completion of road nine months.	6 and 15 } 1,475,000.00	529,425.96
Do.....	Mar. 3, 1867	11	103	Branch Saint Paul and Pacific.....	6 and 15 } 1,475,000.00	
Do.....	Mar. 3, 1865	13	620	do.....	10 and 20 } 1,475,000.00	
Do.....	July 12, 1862	12	624	Resolution authorizing the State to change the branch line on certain conditions.		
Do.....	Mar. 3, 1871	16	588	Saint Vincent extension of Saint Paul and Pacific; south terminus changed from Crow Wing to Saint Cloud.	10 and 20 } 2,000,000.00	1,561,169.45
Do.....	Mar. 3, 1873	17	631	Act extending time for completion of road nine months.	6 and 15 } 645,408.00	178,978.88
Do.....	June 22, 1874	18	593	Act extending time for completion of road to March 3, 1876, &c.	10 and 20 } 645,408.00	
Do.....	Mar. 3, 1867	11	103	Minnesota Central, formerly Minneapolis and Cedar Valley.	6 and 15 } 1,410,000.00	1,069,748.36
Do.....	Mar. 3, 1865	13	620	Minnesota Valley.....	10 and 20 } 1,410,000.00	
Do.....	Mar. 3, 1867	11	103	Winona and Saint Peter, formerly Transit Railroad.	6 and 15 } 1,410,000.00	
Do.....	Mar. 3, 1865	13	620	Winona and Saint Peter.....	10 and 20 } 1,410,000.00	
Do.....	July 12, 1866	14	97	Act allowing selections within twenty miles of road in lieu of lands sold after definite location but prior to withdrawal, &c.		
Do.....	Jan. 12, 1873	17	409	Act extending the time for completion of road.	6 and 15 } 1,010,000.00	916,416.69
Do.....	Mar. 3, 1867	11	103	Saint Paul and Sioux City.....	10 and 20 } 1,010,000.00	
Do.....	Mar. 3, 1873	17	631	Act extending the time for completion of road seven years.	6 and 15 } 920,000.00	710,885.80
Do.....	May 12, 1864	14	57	Lake Superior and Mississippi.....	10 and 20 } 920,000.00	
Do.....	July 12, 1862	12	624	Act authorizing the Lake Superior and Mississippi Railroad Company to make up deficiency of land within thirty miles of west line of road.	6 and 15 } 735,000.00	920,591.44
Do.....	May 12, 1864	14	57	Southern Minnesota.....	10 and 20 } 735,000.00	169,431.01
Do.....	July 12, 1866	14	97	do.....	10 and 20 } 800,000.00	259,510.25
Do.....	July 4, 1866	14	87	Hastings and Dakota.....	10 and 20 } 1,520,000.00	883,544.86
Do.....	July 4, 1866	14	87	Leavenworth, Lawrence and Galveston.....	10 and 20 } 1,520,000.00	
Do.....	Mar. 3, 1867	11	772	Act authorizing change of route of branch line.....	6 and 15 } 8,000,000.00	2,474,693.47
Do.....	Mar. 3, 1867	11	772	Act authorizing the company to relocate a portion of its road.	10 and 20 } 8,000,000.00	
Do.....	Apr. 8, 1863	13	772	Missouri, Kansas and Texas.....	6 and 15 } 1,700,000.00	812,781.43
Do.....	July 2, 1864	14	820	Act making grant from Emporia to a point near Fort Riley of the State.	10 and 20 } 2,350,000.00	13,948.53
Do.....	July 2, 1863	13	772	Act making grant from Emporia to a point near Fort Riley of the State.	10 and 20 } 2,350,000.00	
Do.....	Mar. 3, 1867	11	772	Atchison, Topeka and Santa Fe.....	6 and 15 } 12,000,000.00	1,021,922.90
Do.....	July 2, 1864	14	820	Saint Joseph and Denver City.....	10 and 20 } 12,000,000.00	
Do.....	July 2, 1863	13	459	Missouri River, Fort Scott and Gulf.....	6 and 15 } 12,000,000.00	
Do.....	July 2, 1863	13	459	Union Pacific from Omaha, Nebr., to a point near Ogden, in Utah Territory.	10 and 20 } 12,000,000.00	
Do.....	July 2, 1864	14	820	Act authorizing location of Union Pacific Railroad from Omaha westward.	6 and 15 } 240,166.00	186,153.93
Do.....	July 2, 1864	14	79	Act authorizing location of Union Pacific Railroad from Omaha westward.	10 and 20 } 240,166.00	
Do.....	July 2, 1863	13	367	Resolution granting right of way through military reserve, &c.	6 and 15 } 240,166.00	
Do.....	July 2, 1863	13	367	Resolution for the location of the interests of the United States in the Union Pacific and Central Pacific Railroads, and providing that the common terminus of the road shall be at or near Ogden, Utah Territory, &c.	10 and 20 } 240,166.00	
Do.....	Apr. 10, 1869	16	56	Act fixing the point of junction of the Union Pacific and Central Pacific Railroads, &c.	6 and 15 } 240,166.00	
Do.....	May 6, 1870	16	121	Central branch, Union Pacific.....	10 and 20 } 240,166.00	
Do.....	July 1, 1862	13	459	do.....	6 and 15 } 240,166.00	
Do.....	July 2, 1864	14	356	do.....	10 and 20 } 240,166.00	

* No evidence of the construction of any part of the St. Croix and Lake Superior Railroad and branch, as required by the act, has been filed in the General Land-Office; but the lands have not been restored to the mass of public lands, Congress having taken no action to that end.

Statement exhibiting land concessions by acts of Congress to States and corporations, etc.—Continued.

States.	Date of laws	Statutes.	Page.	Name of Road.	Mile limits.	Estimated quantity embraced in the limits of the grant.....	Number of acres certified or patented up to June 30, 1878.....
Corporat'ns.	July 1, 1862	12	439	Kansas Pacific, formerly Union Pacific Railroad, Eastern Division.	10	6,000,000.00	442,888.35
Do.....	July 2, 1864	13	356	Kansas Pacific.	20		
Do.....	July 3, 1866	14	79	Act requiring the company to designate general route before December 1, 1866.			
Do.....	May 7, 1866	14	355	Resolution extending time for completion of road.			
Do.....	Mar. 3, 1869	15	324	Act extending the Union Pacific Railroad, Eastern Division, line of road to Denver City, and authorizing a transfer of lands by said company to the Denver Pacific Railway Company, between Denver and Cheyenne.			
Do.....	Mar. 3, 1869	15	349	Resolution authorizing the Union Pacific Railway Company, Eastern Division, to change its name to Kansas Pacific.			
Do.....	Mar. 3, 1869	15	324	Denver Pacific.	20	1,100,000.00	49,811.59
Do.....	July 1, 1862	12	439	Central Pacific.	10	8,000,000.00	394,385.78
Do.....	July 2, 1864	13	356	do.	20		
Do.....	July 1, 1862	12	439	Central Pacific, successor by consolidation with Western Pacific.	10	1,100,000.00	448,767.89
Do.....	Mar. 3, 1865	13	504	Act ratifying the assignment made by the Central Pacific Railroad Company to the Western Railroad Company, of that portion from San José to the city of Sacramento.	20		
Do.....	July 13, 1866	14	79	Act authorizing location of road eastward.			
Do.....	May 21, 1866	14	356	Resolution extending the time for completion of first section of twenty miles of Western Pacific Railroad upon certain conditions.			
Do.....	May 6, 1870	16	121	Act fixing the point of junction of the Central Pacific and Union Pacific Railroads, &c.			
Do.....	July 2, 1864	13	354	Burlington and Missouri River.	20 sections per mile.	2,441,600.00	2,378,749.92
Do.....	July 2, 1864	13	354	Act authorizing change of route and connection with the Union Pacific Railroad at or near Fort Kearney.			
Do.....	May 6, 1870	16	121	Sloux City and Pacific.	10	60,000.00	40,198.64
Do.....	July 2, 1864	13	353	Northern Pacific.	States, 20, 30, and 40; Territories 40, 50 and 60.	47,000,000.00	737,046.81
Do.....	July 2, 1864	13	355	Resolution extending time for commencing and completing road.			
Do.....	May 7, 1866	14	255	Resolution extending time for commencing and completing road.			
Do.....	July 1, 1866	15	346	Resolution authorizing issue of bonds, &c.			
Do.....	Mar. 1, 1868	15	57	Resolution authorizing the company to extend its branch line from Portland to Puget Sound, &c.			
Do.....	Apr. 10, 1869	16	378	Resolution authorizing the issue of mortgage-bonds, reversing locations			
Do.....	May 31, 1870	16					

[illegible]

Statements exhibiting land concessions by acts of Congress to States and corporations, &c.—Continued.

States.	Date of laws	Statutes.	Page.	Name of road.	Mile limits.	Estimated quantity embraced in the limits of the grant.....	Number of acres certified or patented up to June 30, 1875.....
Oregon.....	July 5, 1866	14	89	WAGON ROADS.—Continued. Willamette Valley and Cascade Mountain.....	Three alternate sections to be selected within six miles	400,000.00	107,942.28
Do.....	Feb. 27, 1867	14	409	Dallas Military Road.....	8 and 10 miles	553,900.00	128,910.28
Do.....	Mar. 5, 1869	15	246	Cocos Bay Military Road.....	8 and 6 miles	75,000.00	20,482.08

GRANTS FOR RIGHT OF WAY OVER THE PUBLIC LANDS.

Rights of way granted to railroad companies in certain States and Territories.

States and Territories.	Date of laws.	Statutes.	Page.	Name of railroad.
Washington Territory.....	Mar. 3, 1889	15	325	Act granting right of way to the Walla-Walla and Columbia River Railroad Company for 100 feet in width on each side of road, &c.
Do.....	Mar. 3, 1873	17	613	Act amendatory of the original.
Utah Territory.....	Dec. 15, 1870	16	385	Act granting right of way to the Utah Central Company for 300 feet in width on each side of road, &c.
Dakota Territory.....	May 27, 1872	17	162	Act declaring the Dakota Southern Company a legal corporation, and granting the right of way for 100 feet on each side of road.
Do.....	June 1, 1872	17	202	Act granting right of way to the Dakota Grand Trunk Company for 100 feet in width on each side of central line and branches.
Utah, Idaho, and Montana Territories.	June 1, 1872	17	212	Act granting right of way to the Utah, Idaho and Montana Company for 100 feet in width on each side of central line of road.
Iowa.....	June 4, 1872	17	220	Act granting right of way to the Davenport and Saint Paul Company.
Florida.....	June 4, 1872	17	224	Act granting right of way to the Great Southern Railway Company for 100 feet in width on each side of said road and branch.
Do.....	June 7, 1872	17	280	Act granting right of way to the Jacksonville and Saint Augustine Company for 100 feet in width on each side of road and any of its branches.
Florida and Alabama.....	Mar. 3, 1875	18	509	Act granting right of way for 100 feet on each side of the road to Daniel P. Holland <i>et al.</i> for the construction of certain railroads in Florida and Alabama.
Alabama.....	June 8, 1872	17	340	Act granting right of way to the Pensacola and Louisville Company for 100 feet in width on each side of road, &c.
Nevada.....	June 10, 1872	17	383	Act granting right of way to the Eastern Nevada Railroad Company for 100 feet in width on each side of road, &c.
Oregon and Utah Territories.....	Apr. 12, 1872	17	52	Act granting right of way to the Portland, Dalles and Salt Lake Company for 100 feet on each side of centre-line of road and branch.
Colorado and New Mexico Territories.	Supplem. Act. Mar. 3, 1873	17	612	Act granting right of way to the Denver and Rio Grande Railway Company for 100 feet in width on each side of road, &c.
Do.....	June 8, 1872	17	339	Act to correct a clerical error in the above act.
New Mexico Territory.....	Mar. 3, 1875	18	516	Act granting right of way to the New Mexico and Gulf Railway Company for 100 feet in width on each side of road, &c.
Utah and Montana Territories.....	June 8, 1872	17	343	Act granting right of way to the Utah Northern Railroad Company for 100 feet on each side of the road.
California.....	Mar. 3, 1873	17	612	Act granting right of way to the Nevada County Narrow-Gauge Railroad for 50 feet in width on each side of road, &c.
Colorado Territory.....	June 20, 1874	18	130	Act granting right of way for 100 feet in width on each side of the Arkansas Valley Railway.
Nevada and Oregon.....	June 23, 1874	18	274	Act granting right of way to the Oregon Central Pacific Railway Company for 100 feet on each side of the road.
General Act.....	Feb. 5, 1875	18	306	Granting to railroads the right of way through the public lands of the United States for 100 feet on each side of the line of road, with necessary grounds for stations, &c.
	Mar. 3, 1875	18	482	

ATTACHMENT OF RAILROAD RIGHTS.

Table showing the time when the various railroad rights attach to the lands granted, so far as at present determined.

States.	Names of Roads.	Dates.
Illinois.....	Illinois Central.....	September 20, 1860. (Grant fully adjusted.)
Mississippi.....	Mobile and Ohio River.....	September 20, 1860. (Grant fully adjusted.)
	Vicksburg and Meridian, formerly the Southern.....	August 31, 1867. (Grant fully adjusted.)
	Gulf and Ship Island.....	November 1, 1860. (Grant fully adjusted.)
Alabama.....	Mobile and Ohio River.....	September 20, 1860. (Grant fully adjusted.)
	Selma and Florida.....	*August 27, 1866.
	Selma, Rome and Dalton, formerly Alabama and Tennessee.....	May 24, 1867.
	Cocoa and Tennessee.....	*December 27, 1868.
	Mobile and Chattanooga.....	*July 13, 1868.
	Alabama and Chattanooga.....	*May 13, 1868.
	Alabama and Chattanooga, formerly the Northeastern.....	*October 11, 1868.
	South and North Alabama, formerly the Tennessee and Alabama Central.....	May 22, 1868, between Decatur and a junction with the Alabama and Tennessee Railroad in township 22 south, range 2 west, and May 30, 1871, between that point and Montgomery.
Florida.....	Florida Railroad.....	*From survey in the field, which was between May 17, 1863, and January 10, 1867.
	Florida and Alabama.....	*From May 17 to 31, 1866.
	Pensacola and Georgia.....	*March 3, 1867, between Tallahassee and Alligator in Township 13 south, range 17 east, and from September 1 to October 28, 1867, between Tallahassee and Pensacola.
	Florida, Atlantic and Gulf Central.....	*February 17, 1867, in the granted, and September 7, 1867, in the indemnity limits.
Louisiana.....	Vicksburg, Shreveport and Texas.....	January 27, 1867.
	New Orleans, Opelousas and Great Western.....	*October 9, 1866, between New Orleans and Opelousas, and December 19, 1866, between Opelousas and the Texas boundary.
Arkansas.....	Little Rock and Fort Smith.....	August 13, 1865, and under the reviving act, May 13, 1867.
	Calder and Fulton.....	January 17, 1865, and under the reviving act, July 28, 1866.
	Memphis and Little Rock.....	August 18, 1865, and under the reviving act, May 13, 1867.
Missouri.....	Hannibal and Salt Joseph.....	March 8, 1865, in the granted, and June 16, 1863, in the indemnity limits. (Grant virtually adjusted.)
	Pacific and Southwestern Branch.....	1863. (Grant fully adjusted.)
	Salt Louis and Iron Mountain Extension.....	April 7, 1870.
Iowa.....	Burlington and Missouri River.....	March 24, 1867. See Supreme Court Reports, 9 Wallace, p. 98, Railroad Company vs. Fremont County.
	Chicago, Rock Island and Pacific.....	Survey in the field, which was from October 21, 1866, to March 2, 1867.
	Cedar Rapids and Missouri River.....	Survey in the field, which was from September 1, 1866, to July 13, 1867.
	Iowa Falls and Sioux City.....	Survey in the field, which was from May 30 to August 31, 1866.

Iowa—Contin'd.	McGregor and Missouri River.....	August 19, 1864, from McGregor to section 12, township 95 north, range 35 west. From that point to the southwest corner section 18, township 96 north, range 38 west, between November 30 and December 5, 1863, and from that point to a connection with the Saint Paul and Sioux City Road, between June 28 and 30, 1863, the dates of survey in the field. Survey in the field, which was between September 27 and October 4, 1866.
Michigan.....	Sioux City and Saint Paul..... Jackson, Lansing and Saginaw..... Flint and Pere Marquette..... Grand Rapids and Indiana.....	August 4, 1858. November 17, 1857, between Grand Rapids and the Strait of Mackinaw. March 15, 1863, between Grand Rapids and Fort Wayne, Indiana. December 1, 1857. (See Secretary's decision of April 12, 1859, Lester.) June 23, 1856.
Wisconsin.....	Bay de Noquet and Marquette..... Houghton and Ontonagon, formerly Marquette and Ontonagon..... Chicago and Northwestern, formerly Chicago, Saint Paul and Fond du Lac..... Wisconsin Central, formerly Portage, Winnebago and Superior..... West Wisconsin, formerly La Crosse and Milwaukee and Tomah and Saint Croix Roads..... Madison and Portage..... Wisconsin Railroad Farm Mortgage Company..... Saint Croix and Lake Superior and Branch to Bayfield.....	From Fond du Lac to the north boundary of the State. Survey in the field, which was between May 1, 1856, and October 16, 1857. September 7, 1859. July 13, 1857, from Tomah to Lake Saint Croix. March 23, 1856, to additional grant under act May 5, 1864. June 16, 1857. July 13, 1857. November 2, 1857, entire main line, except between Prescott and the south line of township 34 north, which was from November 24 to December 8, 1857, survey in the field. Branch line from survey in the field, which was between May 3 and June 10, 1858. April 22, 1865, to additional grant under act of May 5, 1864. November 9, 1857, within 6-mile limits, and January 16, 1858, between 6 and 15-mile limits of the main line and branch to Crow Wing, and March 8, 1856, to additional grant under that act. From survey in the field, which was between May 18 and September 21, 1871. July 17, 1857, from Winona to the west line of township 110, range 31 west, in the 6-mile limits, and March 22, 1858, between the 6 and 15-mile limits. From that point to the west line of township 108, range 37 west, survey in the field, which was in April, 1864. (See Secretary's decision of August 15, 1874.) January 19, 1857, from that point to the Big Sioux River, in Dakota Territory. To original grant from survey in the field, which was between June 8 and July 26, 1857, and to additional grant under act of March 3, 1866, date of act.
Minnesota.....	Saint Paul and Pacific..... Saint Paul and Pacific, Saint Vincent Extension..... Winona and Saint Peter..... Minnesota Central.....	

*Time taken as definite location from data on file in this Office, subject, however, to correction upon receipt of evidence to the contrary.

†By the act of July 14, 1876, the lands granted west of Brashear City were declared forfeited to the Government, and have since been restored to homestead entry, excepting those falling within the limits of the grant of March 3, 1871, to the New Orleans, Baton Rouge and Vicksburg Railroad.

Table showing the time when the various railroad rights attach, &c.—Continued.

States.	Names of Roads.	Dates.
Minnesota-Cont	Saint Paul and Sioux City.....	From Saint Paul to Section 23, township 106 north, range 34 west, survey in the field, which was from June 8 to October 8, 1857, in the 6-mile limits, and March 22, 1858, between the 6 and 15-mile limits. From that point to section 30, township 104 north, range 30 west, from October 31 to November 8, 1858, within both 6 and 15-mile limits. From that point to the southern boundary of Minnesota, June 29, 1858. To the additional grant under the act of May 12, 1864, from date of act, where the road was already definitely located. September 25, 1864.
	Lake Superior and Mississippi..... Hastings and Dakota..... Southern Minnesota.....	Survey in the field, which was from August 25 to October 24, 1866. From the Mississippi River to Houston, survey in the field, which was from July 21 to August 4, 1867. From Houston to section 23, township 104 north, range 8 west, July 4, 1868. From that point to section 2, township 103 north, range 18 west, January 1, 1867. From that point to section 21, township 104 north, range 37 west, November 29, 1864. From that point to section 4, township 104 north, range 39 west, October 24, 1866. From that point to the western boundary of the State, from survey in the field, which was between October 18 and 24, 1870. From Junction City to Council Grove, from survey in the field, which was between September 5 and 21, 1869. From Council Grove to Emporia, August 10, 1869. From Emporia to the Osage lands, from survey in the field, which was between September 24 and 28, 1866. From the north boundary of the Osage lands to the southern boundary of Kansas, October 15, 1867. February 11, 1868. November 15, 1868, from Lawrence to the north boundary of the Osage lands. November 26, 1867, to the southern boundary of Kansas. March 21, 1870. From Atchinson to Emporia, survey in the field, which was from November 26, 1865, to January 1, 1866. From Emporia to Wichita, survey in the field, which was from May 18 to July 13, 1869.
Kansas.....	Missouri, Kansas and Texas.....	From the sixth principal meridian near Newton to section 27, township 23 south, range 5 west, September 23, 1871. From that point west to section 33, township 23 south, range 6 west, October 9, 1870. From that point west to the mouth of Pawnee Creek, in township 23 south, range 16 west, survey in the field, which was from June 21 to December 1, 1870.
	Missouri River, Fort Scott and Gulf..... Leavenworth, Lawrence and Galveston.	
	Saint Joseph and Denver City..... Atchison, Topeka and Santa Fé.....	

Kansas—Cont.	Atchis on, Topeka and Santa Fé—Continued.....	From that point to the west line of range 27 west, March 22, 1872. From that point to the western boundary of the State, May 30, 1872.
	CORPORATIONS.	
	Union Pacific.....	First one hundred miles west from Omaha, October 19, 1864. Second one hundred miles, June 30, 1866. From the 200th to the 300th mile-post, November 23, 1866. From the 300th mile-post to Brown's Summit, (nearly to the 700th mile-post,) survey in the field, which was from April 1 to November 13, 1867. From Brown's Summit to Ogden, survey in the field, which was from May 1 to July 30, 1868. Withdrawal takes effect for the first hundred miles of road, within 15-mile limits, December 16, 1868, the date when the company filed their map of general route in the Department, and between the 15 and 30-mile limits, July 2, 1864, date of additional grant. Withdrawal takes effect from the 100th mile-post west from Omaha to Salt Lake City, June 23, 1868, the date when the map of general route was filed in the Department. (See Secretary's decision of February 27, 1872.) From Sacramento east to the south line of township 13 north, range 8 east, within 10 miles of the road, June 1, 1863, and within twenty miles, July 2, 1864, date of act. *From that point to the east line of township 17 north, range 13 east, September 14, 1863. *From that point to the Big Bend of the Truckee River, in township 20 north, range 24 east, Nevada, October 25, 1867. From that point to Humboldt Wells, December 18, 1866. From that point to Monument Point, (head of Salt Lake,) January 16, 1867. From that point to Ogden, July 18, 1868. First twenty miles northward from San José, October 3, 1866. From that point to Sacramento, from survey in the field, which was between January 28 and December 13, 1868. From the boundary line between Missouri and Kansas, to section 17, township 11 south, range 18 east, Kansas, February 13, 1864. From that point to Fort Riley, from survey in the field, which was between February 13, 1864, and February 15, 1864. From Fort Riley to the 405th mile-post, (Sheridan, Kansas,) March 3, 1869, date of act. From that point to Denver City, from survey in the field, beginning June 29, 1869, and ending April 25, 1870, at the 635th mile-post. March 3, 1864, date of act. From that point to the 30-mile limits, June 15, 1863. November 3, 1862, in Nebraska, and in Iowa, from survey in the field, which was between November 20 and December 7, 1862. From a junction with the Lake Superior and Mississippi Road, in Minnesota, to the Red River of the North, November 21, 1871.
	Central Pacific.....	
	Western Pacific.....	
	Kansas Pacific.....	
	Denver Pacific.....	
	Central Branch Union Pacific.....	
	Burlington and Missouri River.....	
	Sioux City and Pacific.....	
	Northern Pacific.....	

*Time taken as definite location from data on file in this Office, subject, however, to correction upon receipt of evidence to the contrary.

Table showing the time when the various railroad rights attach, &c.—Continued.

States.	Names of roads.	Dates.
Nebraska—Cont.	CORPORATIONS—Continued.	
	Northern Pacific—Continued.....	From the Red River of the North to the Missouri River, in Dakota Territory, May 26, 1872. From Kalama, Washington Territory, north to Tenino, sixty-five miles, September 13, 1873. From Tenino to Tacoma, on Puget Sound, May 14, 1874. According to a decision of the Secretary of the Interior, dated March 22, 1873, the first withdrawal of lands takes effect from the acceptance of the map of general route by the Department, from which time settlement is excluded from the granted sections, and the alternate reserved sections are raised to \$2.50 per acre. The first map of general route through Minnesota and a portion of Washington Territory was accepted August 13, 1870. Subsequently amended in parts both in Minnesota and Washington Territory. The map of general route through Dakota, Montana, Idaho, and a portion of Washington Territories, was accepted February 21, 1872. The map of general route of the branch line, in Washington Territory, was accepted August 15, 1873. From Springfield, Missouri, to the western boundary of the State, December 17, 1890. From that point to the mouth of Kingfisher Creek, in Indian Territory, December 2, 1871. From that point to the eastern boundary of New Mexico, February 7, 1872. From that point to the eastern boundary of California, March 12, 1872. From San Francisco to San Miguel, Cal., March 12, 1872. Through the county of Los Angeles and part of San Bernardino, Cal., March 12, 1872. From San Miguel Mission to the Los Angeles County line, August 15, 1872. From a point in township 7 north, range 7 east, S. B. M., San Bernardino County, to the Colorado River, August 15, 1872. Road not yet definitely located. Lands withdrawn upon a preliminary line, withdrawal taking effect from date of receipt of the order at the district and office. And— Arizona Territory, December 20, 1871; California, October 15, 1871. Road not yet definitely located. Lands withdrawn upon a preliminary line, taking effect from date of receipt of the order at the district offices, which was as follows: Letter of November 23, 1871, received at New Orleans, December 11, 1871; letter of November 20, 1871, received at New Orleans, December 20, 1871; letter of March 27, 1873, received at New Orleans, April 8, 1873; 28 1877. (Grant declared forfeited by act of April 15, 1874, and lands restored to market.)
California	Texas Pacific	
	New Orleans, Baton Rouge and Vicksburg	
	Placerville and Sacramento Valley	

California-Cont	Stockton and Copperopolis.....	October 18, 1877. (Grant declared forfeited by act of June 13, 1874, and lands restored to market.)
	Oregon Branch of the Central Pacific, formerly California and Oregon.....	From receipt of letters of withdrawal at the district land-offices, which was as follows: Marysville, November 26, 1867; Sacramento, November 28, 1867; Humboldt, December 2, 1867; Shasta, September 6, 1871, (which latter date includes lands from township 32 north to north line township 46 north.)
	Southern Pacific of California.....	First withdrawal became effective January 3, 1867, date of filing the map of general route in the General Land-Office. (See Secretary's decision of April 23, 1878, in case of Alfred Queen vs. Southern Pacific R. R. Co.) Withdrawal for branch line, under act of March 3, 1871, became effective April 3, 1871. Right of road attaches from the dates of filing the maps of definite location in the General Land-Office.
Oregon.....	Oregon and California.....	From Portland, Oregon, south to township 10 south, range 2 west, February 16, 1874.
		From that point to the south line of township 13 south, April 28, 1870.
		From that point to the south line of township 27 south, April 23, 1870.
	Oregon Central.....	From that point to near the south line of township 30 south, April 13, 1871.
		From Portland, Oregon, to the Yamhill River, near McMinnville, and from a junction near Forest Grove toward Astoria, twenty miles, May 28, 1871.
		From Astoria to Castor Creek, in the direction of Portland, January 31, 1874.

DEPARTMENT OF THE INTERIOR,
General Land-Office, June 25, 1875.

S. S. BURDETT,
Commissioner.

CIRCULAR.

No. 395.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 1, 1875.

REGISTERS AND RECEIVERS, U. S. LAND-OFFICES:

GENTLEMEN:—It has been the practice in many of the district offices to forward certified lists of Railroad Selections in which tracts have been entered and subsequently erased, without explanation, by means of foot-notes or otherwise, showing by whom or for what reason they have been stricken out.

This practice is wholly erroneous, and leads to great confusion in the adjustment of such selections.

It is, therefore, required that clear lists of approval shall, in every case, be made out by you, or required of the selecting agents, after your examination of the tracts which you are prepared to certify, showing clearly, and without erasure, the description of the lands and the area of each tract; also the aggregate area, properly footed in the columns and set forth in the certificate.

For rejected selections you will then require a new application and list, with tender of fees, upon which you will note opposite each tract the objections appearing upon your books, and indorse thereon, in full, your reasons for refusing to certify the same. Should the agent appeal, you will allow him to file such appeal in writing, properly drawn and dated, with the points of exception to your ruling, and when completed you will forward it, with the list of rejected selections, for the action of this Office. No erasures should appear in such lists; the rejection will sufficiently appear from your notes and indorsements, and, if finally admitted, the lists will then be in complete and perfect order for filing.

To secure uniformity in the lists and to make them convenient for binding, properly ruled blanks for selections will be furnished for use of the district officers in perfecting the lists according to the foregoing requirements. When needed, you will please advise this Office, in order that a supply may be promptly furnished.

Lists containing erasures hereafter received at this Office will not be filed, but will be returned to you for perfection. You will, therefore, avoid unnecessary labor by strict attention to these regulations.

Very respectfully,

S. S. BURDETT, *Commissioner*.

See No. 394.

No. 396.

GEORGE S. BOUTWELL.

Discussion as to when the rights of railroad companies vest to the lands embraced in their grants.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 7, 1875.

HON. GEO. S. BOUTWELL, *U. S. Senate*.

SIR:—In response to your letter of yesterday requesting information, I have the honor to state that the precise dates at which the rights of railroad companies vest to the lands granted by acts of Congress vary

according to the terms and conditions of the several acts making the grants.

In nearly all the acts the date of the definite location of the line of the road is fixed as the time to be considered. Others require some other act, as the filing of the map of location in this Office or that of the Secretary of the Interior.

What constitutes a definite location is the only question of difficulty, respecting which the rulings of the Department must necessarily be based upon the facts and evidence submitted in each particular case.

Where the engineer of the road has been previously authorized to fix the line, his approval of the survey and staking of the line on the face of the earth is considered sufficient.

Where such power has not been conferred upon him, but merely authority to survey and report upon a practicable route, the approval of the officers of the company under sanction of the board of directors is required.

In some cases the time has been fixed by the approval of the Governor or Legislature of the State receiving the grant.

The practical question has been to ascertain a time when by authority of the grantee the line has been so fixed that it cannot be subsequently changed in any material particular without the express authority of the granting power, and when so ascertained this date has been held by the Department as the period of the definite location and the consequent vesting of the rights bestowed by the grant.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 397.

KANSAS PACIFIC RAILROAD COMPANY v. UNION PACIFIC RAILROAD COMPANY, SOUTHERN BRANCH.

On motion for rehearing:

Held—That the Kansas Pacific did not acquire a right to lands west of the meridian of Fort Riley under the act of 1862, because its route was not approved by the President.

It did not acquire a right under the act of 1864, because, 1st, its route was not approved by the President; and 2d, because it did not file its map within 3 years from July 1, 1862.

The acts of 1862 and 1864, as to approval by the President, can stand together. (Sedg. Court and Stat. Law, 123. *Brown v. Com.*, 21 Penn. State 37. *Fordick v. Pevysberry*, 14 Ohio State 472. *Com. v. Her-ring*, 6 Cush. 465. *Wood v. U. S.*, 16 Pet. 362.)

As to filing map within three years, opinion of Attorney General Speed, 11 Op. 462.

It did not acquire title under the act of July 3, 1866. It gave a certain amount of bonds, but no lands. Grants are not implied unless the language fairly imparts a grant. (*Parker v. Great Western R. R.*, 7 Manning and Greenger 253. *Sloughbridge Canal Co. v. Wheeling*, 2 B. and Ad., 9. Op. Att'y Gen'l, 276. *Dubuque & Pacific R. R. Co. v. Litchfield*, 23 How. 66. 11 Pet. 420. 13 do. 71. 16 How. 524. 23 do. 435. 1 Black, 358. 2 do. 722. (Not quoted, but relevant: 4 Wheat, 685. 3 Wallace, 75.)

It did by the third section of the act of March 3, 1869. 15 Stat., 324.

The time of filing map of definite location in the Interior Department is *prima facie* evidence of the time the line of the road is definitely fixed.

Under the acts of 1862 and 1864, the rights of the railroad attached at the time the line is run and located upon the face of the earth, and adopted by the company.

The road that first locates and adopts its route is the one first entitled. Previous decision of July 24, 1871, reaffirmed.

[NOTE.—Prior to these decisions the ruling of the Department was, that between grants of different dates (of acts of Congress) the earlier grant took the lands within conflicting limits; and between grants of the same date, the lands within conflicting limits were held jointly.—Ed.]

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, Oct. 3, 1871.

SIR:—I have considered the application of the Kansas Pacific Railroad for a rehearing of the case involving a conflict with the Union Pacific Southern Branch of claim to certain lands near Junction City, in Kansas. For a full statement of the facts I refer to my opinion of the 21st of July, 1871.

The Hon. Secretary is now asked to reconsider and reverse the decision made in accordance with that opinion, for two reasons:

First, because I erred in holding that the Kansas Pacific had no grant of lands west of the meridian of Fort Riley until the passage of the Act of March 3, 1869; and, Second, because I erred in holding that the definite location of the Southern Branch was made before that of the Kansas Pacific.

I will examine these in their order:

First. I did not intend to hold that the Kansas Pacific had no land grant west of Fort Riley until the Act of 1869. In my opinion as originally prepared, I did say that the "Kansas Pacific did not acquire any lands west of Fort Riley until the passage of the Act of March 3d, 1869. That was subsequent to the definite location of the Union Pacific Railroad, Southern Branch;" but, after the original draft, and as I supposed before its promulgation, I struck out those words and inserted in their stead the following: "Probably it did not acquire any right to lands west of Fort Riley until the passage of the Act of March 3, 1869; but as this point has not been argued, and is not material in the present inquiry, I shall leave it for future consideration."

I have now given the subject further consideration, and am led to the conclusion that my first impressions were correct, and that the Kansas Pacific never did acquire any right to lands west of the Meridian of Fort Riley until the passage of the act of March 3, 1869.

By the 9th section of the act of 1862, what is now known as the Kansas Pacific was authorized to "construct a railroad and telegraph line from the Missouri River, at the mouth of the Kansas River, on the south side thereof, so as to connect with the Pacific Railroad of Missouri, to the aforesaid point on the one hundredth meridian of longitude west from Greenwich, as herein provided, upon the same terms and conditions, in all respects, as are provided in this act for the construction of the railroad and telegraph line first mentioned, and to meet and connect with the same at the meridian of longitude aforesaid."

The 3d section points out some of the terms "to which the first-named road was entitled," and grants to it "every alternate section of public land" within certain limits, and not otherwise disposed of. I do not doubt but that the Kansas Pacific, by complying with all the conditions mentioned in the 9th section, would have been entitled to lands west of the meridian of Fort Riley.

One of those conditions is (I quote from the section) that "the route in Kansas, west of the meridian of Fort Riley to the aforesaid point on the one hundredth meridian of longitude, to be subject to the approval of the President of the United States, and to be determined by him on actual survey." It is not pretended that this condition has been complied with. It is not even claimed that there has been any actual survey of the route, or that the President has been called upon to approve or determine, or that he has ever approved or determined the "route in Kansas, west of the meridian of Fort Riley." The company not having complied with the express terms of the law are not in the proper *status* to demand the subsidies given by it. I do not understand counsel to seriously contend that the company would be entitled to the lands if this 9th section were the only legislation on the subject. They insist that there is other legislation, and that by the terms of the proviso of the 9th section of the act of 1864, the company is entitled to the same quantity of land that it would have been, had it completed its road upon the original route to the one hundredth meridian.

That proviso is in these words: "And provided further, that any company authorized by this Act to construct its road and telegraph line from the Missouri river to the initial point aforesaid may construct its road and telegraph line, so as to connect with the Union Pacific Railroad at any point westwardly of such initial point, in case such company shall deem such westward connection more practicable or desirable; and in aid of the construction of so much of its road and telegraph line as shall be a departure from the route hereinbefore provided for its road, such company shall be entitled to all the benefits and *be subject to all the conditions and restrictions* of this Act. Provided further, however, that the bonds of the United States shall not be issued to such company for a greater amount than is hereinbefore provided if the same had united with the Union Pacific Railroad on the one hundredth degree of longitude, nor shall such company be entitled to receive any greater amount of alternate sections of public lands than are also herein provided." It will be observed that this section does not expressly repeal the provision in the Act of 1862, that the route west of the meridian of Fort Riley shall be approved by the President and be determined by him on actual survey.

If repealed at all, it must be by implication. Repeals by implication are not favored in the law. The rule is well settled that a subsequent act will not work a repeal of a former one unless the two are inconsistent with and repugnant to each other. If they can both stand together they must; if some of the provisions are inconsistent and others consistent, only those which are inconsistent will be repealed by the later Act. (Sedg. Const. and Stat. Law, 123. *Brown v. Com.*, 21 Penna. State, 37. *Fordick v. Pevysbury*, 14 Ohio State, 472. *Com. v. Herring*, 6 Cush., 465. *Wood v. U. S.*, 16 Pet., 362.)

There is no such repugnancy in this case. The provision can stand in both. There is the same reason for it in the latter act that there was in the former. The company was given the privilege of changing its

route and going to the west of the 100th meridian, but it must do so upon a route that has been approved by the President and determined by him upon actual survey.

This was one of the "conditions and restrictions" to which the company was subjected by the 9th section of the Act of 1864, and the company not having procured such approval is not entitled to any lands under that act.

Another condition and restriction was that the company should within three years from the passage of the Act (July 1, 1862,) file with the Department of the Interior a map designating the general route of the road as near as the same could be done, and it was thereupon made the duty of the Secretary of the Interior to withdraw the lands along the route from pre-emption entry and sale. (See Secs. 7 and 9 of the Act of 1862, and Sec. 5 of the Act of 1864.) The company did on the 1st day of July, 1865, file such a map in the Interior Department, and designated the route adopted by it as running from the Missouri river to Fort Riley, and thence up the Republican river to the one hundredth meridian. The filing of the map and designating the route within three years from the passage of the act was a condition precedent, and without its being done the company was not entitled to its land grant. This condition applies to the changed route authorized by the proviso to the 9th section of the Act of 1864, as well as to the route to the one hundredth meridian originally adopted.

The company, after the passage of the act of 1864, had its option to go to the 100th meridian or to the west of that meridian. It could not do both. It was obliged to elect within the three years. It did so, and elected to go to the 100th meridian. Having done so it was as to this subject *functus officio*. It could not thereafter change its route without the consent of Congress. It made an effort to do it, and filed a map with the Secretary of the Interior on the 2d day of March, 1866, and more than three years from the 1st of July, 1862, designating a new route from Fort Riley to Denver City, and asked him to withdraw the lands along this route. The Secretary referred the question to Attorney General Speed for his opinion, and he held that the company was too late; that the three years having expired, it had no right to file the map, and that the lands should not be withdrawn. 11 Opinions, 462. He said, "I am perfectly clear in my opinion that after the expiration of three years from the date of the Act of July 1st, 1862, the company had no right to designate a new and different route from that previously adopted and designated on the map of June 23, 1864, and claim thereupon that the lands within fifteen miles of the designated route be withdrawn from entry and sale." * * * "The statutory provision that the general route shall be designated on a map filed in the Department within three years is the legal equivalent of a provision that the designation of the route upon such a map should not be made after that time." * * * "Whatever route was selected, the company was required to designate it and file a map of it in the Department within three years. Then and then only did the company acquire a right to require the withdrawal of the public lands along the route of the road from entry and sale."

From the foregoing it appears that the land could not be withdrawn upon the filing of a map after the three years had expired. The object of withdrawal was to preserve the lands for the company and save them from being settled upon and taken up by others to the exclusion of the

company. If they could not be withdrawn *a fortiori*, they could not be patented to the company. It would be absurd to say that the preliminary step of withdrawal was illegal and unlawful, and yet the act of making complete title was perfectly lawful and proper.

The conditions and restrictions imposed upon the various companies by the Acts of 1862 and 1864 were numerous.

The seventh section, act of 1862, required the company to file its assent under the seal of the Company within one year from its passage. The 10th section required the company therein named to complete one hundred miles of its road within two years, and one hundred miles per year thereafter. The 13th section limited the distance for which the Hannibal and St. Joseph Railroad should be authorized to receive the bonds to one hundred miles. Sections 14 and 17 required certain things to be done, and denounced forfeitures upon their failure. Sec. 5 of the act of 1864 required the road therein named to construct twenty-five miles per year, and the whole to the State line within four years. Sec. 12 required the Kansas Pacific in a certain contingency to build a road, within two years, from the city of Leavenworth, to unite with the main stem at or near Lawrence. If these respective railroads had failed to build their roads within the respective times specified in the law, it is clear that they would not have been entitled to their land grants, and that it would have been the duty of the Secretary of the Interior to have refused to give patents to them.

Is it not equally clear that under the acts of 1862 and 1864, the company has no valid claim to lands west of Fort Riley, because it has failed to comply with the requirements of those acts in the particulars I have specified?

Is the company entitled under the act of July 3, 1866?

That act authorizes the company to designate the general route of its road, and file a map thereof "as now required by law," at any time before the 1st day of December, 1866, and required the Secretary of the Interior, upon the filing of the map, to reserve the lands from sale, and contained a proviso that the company should only be entitled to the same amount of bonds as it would have been, had it connected with the Union Pacific at the one hundredth meridian, and that it should connect with the Union Pacific at a point not more than fifty miles west of the meridian of Denver, in Colorado. If this act contains any grant of lands, the grant must be implied from the fact that the Secretary is directed to reserve the lands from sale. But grants are not implied. They are construed strictly against the corporation, and in favor of the public, and nothing passes except what is given in clear and explicit terms. This is a familiar principle of construction.

In *Parker v. The Great Western Railway Company* (7 Manning and Granger, 253), the Right Hon. Sir Nichols Conyngham Tindal, Chief Justice of the Common Pleas, uses the following language: "It is to be observed, that the language of these acts of Parliament is to be treated as the language of the promoters of them. They ask the legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Acts passed under such circumstances should be construed strictly against the parties obtaining them, but liberally in favor of the public."

And Lord Chief Justice Tenterden, of the King's Bench, did not hesitate to declare that "an act of Parliament, passed for the benefit of a canal or railway company, is a bargain between a company of adven-

turers and the public, the terms of which are expressed and set forth in the act; and that the rule of construction in all such cases is now fully established to be, that any ambiguity in the terms of the contract must operate against the adventurers and in favor of the public, the former being entitled to claim nothing which is not *clearly* given to them by the act." (*Stonebridge Canal Company v. Wheeley*, 2 B. and Ad., 793.)

To the same effect was the opinion of the Attorney General of the United States of November 22, 1858, in giving a construction to the Des Moines River grant, under the act of August 18, 1846. "For my own part," he says, "I have not the least doubt about it: the very obscurity of the grant in my judgment makes it clear. It is out of these doubts that certainty grows. In every doubtful case, we know very well what we ought to do, as soon as we ascertain which party is entitled to the benefit of the doubt. We shall see who is entitled to it here. It is well settled that all public grants of property, money, or privileges, are to be construed most strictly against the grantee. Whatever is not given expressly, or very clearly implied from the words of the grant, is withheld. This is most especially true of legislative grants; and for very good reasons, the rule ought to be adhered to with unyielding firmness. We all know the fact, and are not bound to seem ignorant of it, that gifts like this are often caused by private solicitation and personal influence. The bills are almost invariably drawn up by their special friends, and may be made ambiguous on purpose to disarm their opponents, or put suspicion asleep. If you let the grantees have the advantage of the ambiguity which they themselves put into their own laws, many of them will get a meaning which Congress never thought of. * * * The remedy for these evils, and they are evils to the public records as well as to the Treasury, is to let all men know that they can get nothing from the United States except what Congress has chosen to give them, in words so plain that their sense cannot be mistaken." (Ops. Att'y Gen'l., Vol. 9, p. 275.)

The same rule of construction was applied to the Des Moines grant by the Supreme Court of the United States, in the case of *Dubuque and Pacific Railroad Company v. Litchfield* (23 How., 66), and Judge Catron, in delivering the opinion, states the reason of the rule to be, that "parties seeking grants for private purposes, usually draw the bills making them; and if they do not make the language sufficiently explicit and clear to pass everything that is intended to be passed, it is their own fault; while on the other hand such a construction has a tendency to prevent parties from inserting ambiguous language, for the purpose of taking by ingenious interpretation and insinuation that which cannot be obtained by plain and express terms." See, also, 11 Pet., 420. 13 Do., 71. 16 How., 524. 23 Do., 435. 1 Black, 358. 2 Do., 722.

Applying this rule, and it is evident that there is no grant of lands in this act. There is a grant to the company of the same amount of bonds that it would have been entitled, had it built its road to the one hundredth meridian. Congress must have supposed that the law, as it then stood, did not give these bonds to the road. Otherwise, it would have been silent on the subject. It is not to be presumed that it would have done or it did do a vain or needless thing. It had its special attention directed to this grant, and it gave the bonds, but *no lands*. This fact is very satisfactory evidence, to my mind, that Congress did not intend that the company should have an amount of lands equivalent to those it

would have been entitled to, had it gone to the one hundredth meridian. If it had, it would have said so when it was giving the equivalent amount of bonds.

My conclusion is that the company had no land grant west of Fort Riley, under the act of 1866

Had it under the act of March 3, 1869?

That act, 15 Stat., 324, contains three sections. The first provides that the now Kansas Pacific Railroad may contract with the Denver Pacific Railway and Telegraph company, for the construction, operation and maintenance of that part of its line between Denver and its point of connection with the Union Pacific, which point shall be at Cheyenne, and adopt the road bed, already graded by the Denver Pacific, and grants to the Denver Pacific the perpetual use of its rights and privileges.

The second provides that the now Kansas Pacific shall extend its railroad and telegraph to a connection at Denver, so as to form with the Denver Pacific a continuous line of railroad and telegraph from Kansas City, by way of Denver, to Cheyenne, and that all the provisions of law for the operation of the Union Pacific railroad, its branches and connections, as a continuous line, shall apply the same as if the road from Denver to Cheyenne had been constructed by the Union Pacific Railroad Company, Eastern Division.

The third section authorizes said companies to mortgage their respective portions of road, and provides that "each of said companies shall receive patents to the alternate sections of land along their respective lines of road, as herein defined, in like manner and within the same limits, as is provided by law in the case of lands granted to the Union Pacific Railway Company, Eastern Division: *Provided*, That neither of the companies hereinbefore mentioned, shall be entitled to subsidy in United States bonds under the provisions of this act."

This last clause does contain a grant to the road, and seems to be carrying out the purpose Congress had in view, in the act of 1866, when it directed a reservation of the lands along the new route.

Second.—As to the definite location of the Southern Branch having been made prior to that of the Kansas Pacific. In my examination of this case in July last, I took the case as I found it, and rendered my opinion upon the facts that were before me. The only evidence then before me as to the times when these respective roads were definitely located, was the official statement that the Southern Branch had filed its map of definite location in the Interior Department, on the 26th of November, 1866, and the Kansas Pacific on the 7th of May, 1867. From this evidence I found that the Southern Branch had definitely located its road prior to the Kansas Pacific. I do not see how I could have done otherwise. The filing of the map is certainly *prima facie* evidence, and when there is no other it should be taken as the true time.

It is now alleged that there is more evidence on this point, and that the Kansas Pacific was first located. In support of this allegation counsel have filed with me certified copies of certain correspondence had in the Interior Department. This correspondence shows that Secretary Browning, on the 20th of December, 1866, wrote to the Commissioners appointed to examine the Kansas Pacific, and informed them that the President of that road had filed an affidavit that the sixth section, commencing at a point 130 miles from the east line of the State of Kansas and terminating at a point 150 miles west of said State line,

had been completed, and directing them to examine and report upon the same. This sixth section commenced at Fort Riley. When it was definitely located or completed is not shown. It is left to be inferred that it was prior to the 26th of November, 1866—the time of the definite location of the Southern Branch.

The argument, if stated, would be: the road is found completed for twenty miles west of Fort Riley, on the 20th of December, 1866; therefore it must have been located prior to the 26th of November, 1866. That may have been so, and probably was, but there is better evidence than has been produced. The records of the proceedings of the Board of Directors would give the exact date of location. Upon this motion for a rehearing upon the ground of error in the date of definite location, the best evidence ought to be given. We all know as matter of history, that portions of the Pacific Railroad were built very rapidly, sometimes many miles per day. How it was in regard to this particular twenty miles, is not shown. The Chief Engineer states in his letter of December 28, 1866, to the Commissioners, that the road had been running to Junction City "since October last." Junction City is a few miles to the west of Fort Riley. Taking this statement as evidence, (which it is not) and it renders it altogether probable that as a matter of fact the Kansas Pacific was definitely located, along the line in controversy, prior to the Southern Branch.

Assuming that such was the case, and the question arises whether the time of filing a map of definite location in the Interior Department is to be taken as conclusive evidence of the time of such location?

The acts now under consideration do not, in terms, require the filing of such a map. Many of the later acts expressly require it and fix the time of such filing as the time when the rights of the railroad attach. In favor of requiring such map to be filed and making the time of such filing conclusive, it may be said that such a rule would be exceedingly convenient for the Interior Department. Most of the controversies, if not all, between individuals and railroad companies relating to the public lands, are heard in, or can be carried by appeal to that Department. In every contest it is necessary to know when the right of the railroad to the particular tract in dispute was definitely fixed, and it is but reasonable that the act which determines this point should be reported to that Department. But while it would be reasonable that such a report should be required and it would be very convenient to treat the time of filing the map showing such definite location as conclusive, yet I am of opinion that *under the law applicable to this case*, the time of the actual definite location of the road on the face of the earth, and its approval by the Directors of the Company, was *the time* at which the right of the Company attached, irrespective of the time of filing the map in the Interior Department. That time is a question of fact, and like all disputed questions of fact, must be shown in each case. In cases where it is shown that the road has been constructed and running, it will be safe for the Department to assume that it was done before construction. In all cases where the road is not constructed, it should be shown that the line has been adopted by the Directors and has actually been run and marked off on the face of the earth, or, what is perhaps more in accordance with the usual practice, that the line has actually been run and marked off on the face of the earth and then adopted by the Directors of the road.

Under this rule it is probable that the Kansas and Pacific, on a re-

hearing, would be able to show that their definite location of the line west of Fort Riley was prior to that of the Southern Branch; but that showing would be of no advantage to the road if I am correct in the opinion before arrived at, that it had no land granted to it until the act of March 3, 1869.

I must therefore advise adversely to the request of the Kansas Pacific for a re-hearing.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DFLANO, *Secretary of Interior.*

Concurred in by the Secretary, October 3, 1871.

No. 398.

UNION PACIFIC RAILROAD v. TOWN-SITE OF CHEYENNE ET AL.

Lands within an incorporated city or occupied exclusively for the purposes of commerce and trade, and not agriculture, are not subject to pre-emption settlement.

Sioux Half Breed Scrip is only locatable on unoccupied lands subject to pre-emption settlement or private entry, or on unsurveyed land improved by Sioux Indians.

Discussion of what constitutes the definite location of the line of a railroad.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 27th September, 1872.

SIR :—I have examined the case of the *Union Pacific Railroad Company v. the Trustees of the City of Cheyenne, Philomen Provencal, Henry Garbonati, et al.*, on appeal from your decision of October 13th, 1871.

Henry Garbonati and a number of others who have filed declaratory statements, claim specified tracts under the pre-emption act of 1841, and the various acts amendatory thereof.

Philomen Provencal, or rather the Denver Pacific Railroad Company in his right, claim a portion of the land in controversy, under a location with Sioux Half Breed Scrip issued under the act of July 17th, 1852 (10 Stat., 304).

The trustees of the City of Cheyenne claim nearly all the land in contest under the town-site act of March 2d, 1867, (14 Stat., 541,) and the act of June 8, 1868, (15 Stat., 67,) amendatory thereof.

The Union Pacific Railroad Company claim under their grants of July 1st, 1862, (12 Stat., 489,) and July 2d, 1864, (13 Stat., 357,) all the odd sections, and parts of sections in controversy, and also all such portions of even sections as have been reserved and are occupied for the uses of the road, and on which are situated the buildings and structures necessary for the construction, use and operation of the road.

Your decision was adverse to the pre-emption claimants, on the ground that none of them made settlements prior to the survey of the lands into lots and blocks for the purposes of a town, and only one of them settled prior to the actual incorporation of the city by the Territorial Legislature of Dakota, in which the now City of Cheyenne was then situated. You also reject the application to locate a portion of the land in controversy with Sioux Half Breed Scrip, on the ground that such application was made subsequent to the incorporation of the city. You

also reject the claim of the trustees of the City of Cheyenne to the odd sections of the land in contest, on the ground that the line of the Union Pacific Railroad was definitely fixed through the land in controversy, not later than the 10th of July, 1867, which date, you find, was prior to the initiation of any adverse claim. You accordingly award all the odd sections, and parts of sections in controversy, to the Railroad Company, and reserve your decision with reference to the claim of the Trustees to the even sections, until the sectional lines shall have been regularly run through the city.

You were undoubtedly right in rejecting the claims of the alleged pre-emptors, and the attempted location with S. H. B. Scrip. Lands included within the limits of an incorporated city, or occupied exclusively for the purpose of commerce and trade, and not agriculture, are expressly protected from pre-emption settlement, and the scrip in question is only locatable on unoccupied lands subject to pre-emption settlement or private sale, or unsurveyed land improved by Sioux Indians.

With reference to the claim of the road and the Trustees of Cheyenne, you hold that the right of the road attaches to the odd sections in controversy at the date of its definite location, and that its definite location at this point was not later than July 10th, 1867.

I agree with you in these two conclusions. The grants of 1862 and 1864 to the Union Pacific Railroad Company took effect when the line of the road was *definitely fixed on the face of the ground*. (8 Opins., 244. 9 Opins., 41. *R. R. v. Smith*, 9 Wallace, 95. *R. R. v. Fremont*, 9 Wallace, 89. *U. P. R. R. v. Freeman*, Opins. Asst. Att'y Gen'l, Vol. 1, p. 4.) The filing of the map of definite location in the Interior Department is *prima facie* evidence of the time when the line of the road was definitely fixed, but it is not conclusive; and when the question is raised and is material, it is competent to show by other admissible evidence that the line was actually run and staked on the ground, and as so run and staked was approved by the Company, or its authorized representative, prior to the filing of the map thereof, such approval of an actual survey being the date at which under the acts of 1862 and 1864, the line of the Union Pacific Railroad became definitely fixed. (*Kansas Pacific v. Union Pacific, Southern Branch*, Opins., Asst. Att'y Gen'l, Vol. 1, p. 231.) (No. 397.)

The evidence fairly recited in your decision shows that the final survey of the Union Pacific Railroad was made through the land in controversy in the early part of June, 1867, the line being actually staked out on the ground; that the surveying party was driven away from its work about this time by the Indians; that the survey was resumed about July 2d, 1867, under the direction of the Chief Engineer of the road, Gen. G. M. Dodge; that the survey at this point was entirely finished by the 7th of July, and that the map of such survey was delivered to the Chief Engineer on the 3d day of that month. It further appears that on or about the 12th day of July, 1867, the engineer and surveyor of the road, under and by direction of the Chief Engineer, commenced to lay out in blocks and lots the present town-site of Cheyenne, and that this survey was completed by the 25th of that month. It further appears that after such survey, the Company disposed of the lots so laid out to any persons who chose to buy, and that shortly afterwards a town of several thousand inhabitants was found on the land surveyed. It also still further appears that the road was finished through the tract in controversy in November, 1867, on the

line as finally surveyed in June or July of that year. The map of definite location as now found in the Department was approved by the Chief Engineer at the city of Washington, D. C., December 9th, 1867, and by the officers of the Company at the city of New York, December 20th, 1867, the sectional marks on the same showing the survey in the vicinity of Cheyenne to have been made in July, 1867.

I think the above cited facts are sufficient to show that the line of the road was finally surveyed, and the survey, in fact, approved by the Chief Engineer as early as the 10th of July, 1867, prior to which time no valid adverse rights had been initiated.

The survey in July appears to have been made under the personal supervision of the Chief Engineer, which was in effect an approval by that officer, at the time, of the line as run. A town was immediately laid out contiguous to, and parallel with, the line of the road; sales of the land were made, and binding obligations relating thereto entered into by the company. Add to these the additional facts that a few months later the road was actually constructed on the line, and a map within seasonable time was thereafter filed in the Department, and it is evident that in this instance the line of the road was actually definitely located, within the meaning of the acts of 1862 and 1864, when the final survey of the same was made upon the ground under the personal direction of the Chief Engineer, and in accordance with the resolution of the Board of Directors previously adopted.

I therefore affirm your decision awarding the odd sections in contest to the road, and return herewith the papers transmitted with your letter of June 5th, 1872.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 399.

SOUTHERN PACIFIC R. R.

Held—That the lands withdrawn at the date the map of definite location was filed with the Commissioner and at the date of the act July 27, 1866, and the Joint Resolution of June 28, 1870, did not go to the railroad under the grant, but were a part of the public domain and should be restored to market. (*Wolcott v. Des Moines*, 5 Wall. *Moeller vs. Southern Pacific Railroad*, decided by Secretary Browning, February 9, 1869.)

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 9th May, 1873.

SIR:—I have considered the question submitted for my opinion, presented by the application of James F. Stuart, to have certain lands, now withdrawn, restored to market, and the application of the Southern Pacific Railroad to have the same lands patented to said road.

The facts are these: January 30th, 1865, lands were withdrawn for the Central Pacific Railroad, for twenty-five miles on each side of a designated route from Sacramento, via San José, to San Francisco, California, under the acts of July 1, 1862, (12 Stat., 409,) and July 2, 1864, (13 Stat., 356.) The rights conferred by these acts upon the Central Pacific were assigned to the Western Pacific, so far as they relate to the construction of the said road from San José to Sacramento, and this assignment was ratified by the act of March 3d, 1865. (13 Stat., 504.)

By the act of July 27, 1865, (14 Stat., 292,) the Southern Pacific Railroad, a company incorporated under the laws of the State of California, was authorized to connect with the Atlantic and Pacific Railroad at such point near the boundary line of the State of California as it should deem most suitable for a railroad line to San Francisco, and was granted, to aid in its construction, every alternate section of public land, not mineral, designated by odd numbers, to the amount of ten alternate sections per mile on each side of its road, to which the United States had full title, *not reserved*, sold, granted or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of the road should be designated by a plat thereof filed in the office of the Commissioner of the General Land-Office, with the rights to indemnity within ten mile limits.

This Southern Pacific Company located its line and filed a map of the same in the Interior Department, January 3, 1867, and thereupon, on the 22d day of March, 1867, a withdrawal was directed of the odd sections that would inure to the road. Subsequently it was shown, to the satisfaction of Secretary Browning, that the location made by the Southern Pacific was not in accordance with the law of California, under which the Company was created; and he, on the 14th of July, 1868, revoked his former order of withdrawal and directed a restoration of the lands withdrawn.

Afterwards and on the 20th of August, 1868, he suspended so much of his order of July 14th, as related to the restoration of lands south of San José.

Mr. Secretary Cox, November 2d, 1869, affirmed the decision of his predecessor that the Southern Pacific was improperly located, and revoked the order of August 20th, 1868, and directed a restoration of the lands withdrawn south of San José. On the 15th of December, 1869, at the request of Senator Howard, chairman of the Senate Committee on the Pacific Railroad, and upon a suggestion that legislation was contemplated, he suspended his order of restoration, made on the 2d of November as aforesaid.

On the 28th of June, 1870, Congress passed the following Joint Resolution:

"Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled: That the Southern Pacific Railroad Company of California may construct its road and telegraph line, as near as may be, on the route indicated by the map filed by said Company in the Department of the Interior on the third day of January, eighteen hundred and sixty-seven; and upon the construction of each section of said road, in the manner and within the time provided by law, and notice thereof being given by the Company to the Secretary of the Interior, he shall direct an examination of each such section by Commissioners to be appointed by the President, as provided in the act making a grant of land to said Company, approved July twenty-seventh, eighteen hundred and sixty-six, and upon the report of the Commissioners to the Secretary of the Interior that such section of said railroad and telegraph line has been constructed as required by law, it shall be the duty of the said Secretary of the Interior to cause patents to be issued to said Company for the sections of land coterminous to each constructed section reported on as aforesaid, to the extent and amount granted to said Company by the said act of July twenty-seventh, eighteen hundred and sixty-six, expressly saving and

reserving all the rights of actual settlers, with the other conditions and restrictions provided for in the third section of said act." (16 Stat., 382.)

This resolution adopts and makes legal the route which had been selected by the Company, and which without such adoption was undoubtedly illegal. It operates as a grant to the road, *in present*, and is the first authority given to the Company to construct its road upon the line selected. It makes such grant to the same extent and for the same amount, and subject to all the conditions and restrictions, specified in the 3d section of the act of July 27th, 1866.

One of those conditions is that the grant shall not operate upon any lands *reserved* at the time the line of the road was designated by a plat filed in the office of the Commissioner of the General Land-Office.

The lands that were withdrawn for the Central Pacific, January 30th, 1865, were at the time such plat was filed in the office of the Commissioner, and at the passage of the act and joint resolution, *reserved* within the meaning of that term.

Wolcott v. Des Moines, 5 Wall., 681. *Moeller v. Southern Pacific Railroad*, decided by Secretary Browning, Feb. 9, 1869. They therefore do not go to the railroad under the grant, and patents should not issue therefor, but they are a part of the public domain, and should be restored to market, and you will take all steps necessary to accomplish that object.

Very respectfully,

C. DELANO, *Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 400.

NORTHERN PACIFIC R. R.

This was an application to cancel certain entries made on odd sections within granted limits after the map of the general road had been filed and accepted, and before the definite location of the line of the road and before the order of withdrawal had been issued to the local office.

Held—That under the 6th section of the charter the entries were improperly made and should be cancelled.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, March 15, 1873.

SIR:—I have examined the appeal of the Northern Pacific Railroad Company from the decision of the Commissioner of the General Land-Office of August 19, 1872, relative to the application of said company to have cancelled as illegal under the 6th section of the Act of Congress of July 2, 1864, (13 Stat. 369,) all entries and locations of odd sections of land allowed subsequent to the filing and acceptance of the map of the general route of the road, within the limits of twenty miles in the States and forty miles in the Territories on each side of the line as designated on said map.

The sixth section of the act referred to is in the following words:

"And be it further enacted, that the President of the United States shall cause the lands to be surveyed for forty miles in width on both sides of the entire line of said road after the general route shall be fixed and as fast as may be required by the construction of said railroad; and the odd numbered sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed,

except by said company, as provided in this act; but the provisions of the act of September, 1841, granting pre-emption rights, and the acts amendatory thereof, and of the act entitled 'an act to secure homesteads to actual settlers on the public domain,' approved May 20th, 1862, shall be, and the same are hereby extended to all other lands on the line of said road when surveyed, except those hereby granted to said company, and the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre when offered for sale."

It is claimed on the part of the Company that the legal effect of this section was to reserve from disposition under the general laws of the United States all odd numbered sections within the limits of their grants along the general route, as shown by a map of the same, filed by the company and accepted by the Secretary of the Interior, August 13th, 1870, and that all entries or locations made of lands within these limits subsequent to the filing and acceptance of such map should be cancelled, and the lands held to satisfy the grant to the company made by the third section of the act.

The Commissioner in his decision of August 19, 1872, denied the prayer of the Company for a cancellation of entries made subsequent to the approval of the map of general route, and prior to the withdrawal of the lands by the Department on the grounds: First, that *bona fide* settlers who had continued to improve their claims on the faith of the government withdrawal would be prejudiced thereby; and, Second, on the ground that the particular clause of the section relied upon did not operate as a withdrawal of lands from market, but related to the tracts which, under the third section, should be found on definite location to belong to the Company, and was intended to protect the unsurveyed as well as the surveyed odd sections, as without said proviso it might have been questioned whether the Company could claim any odd numbered sections prior to survey. From this decision appeal has been taken to the Department.

The only question presented by the appeal relates to the construction of the 6th section. If this section operated as a withdrawal, as claimed by the Company, then of course all entries and locations made subsequent to the filing and approval of the map of general route are illegal, and must be cancelled.

I am compelled to reject the construction given by the Commissioner and accept that insisted upon by the Company, for the reason that the latter seems justified by the usual meaning and acceptance of the words, is consistent with the objects contemplated by the act, and is the only construction by which I can find any application for or give any effect to the following clause of the section, "and the odd sections of land hereby granted shall not be liable to sale, or entry, or pre-emption, before or after they are surveyed, except by said company, as provided in this act." If it be said that the words "hereby granted," refer to the grant made by the third section, that such grant was for odd sections undisposed of at the date of definite location, and that these sections are the ones protected from sale, it must be admitted that Congress took great care to protect in explicit language in the sixth section what was already perfectly protected by the third. There can be no question whatever that definite location of the road and the filing of the map of such definite location with the Commissioner of the General Land-Office will, under the third section alone, give to the company a vested

right to all odd sections, not sold, etc., and to which the United States have full title, found within the limits of the grant to the road as so located, whether the same are surveyed or unsurveyed, and that any settlements made thereon subsequent to such definite location would be illegal and void. If I understand the decision of the Commissioner correctly upon this point, he holds that without the insertion of the clause quoted above, a question might have been raised as to the right of the Company to any odd sections before survey, and that the object of the clause was to place unsurveyed land in the same class with surveyed lands under the grant. In my opinion the use of the clause for this purpose was as unnecessary as it was for the purpose of protecting the odd sections after definite location. In relation to a grant of this character, made with direct reference to the construction of a road through unsurveyed land, it does not, in my opinion, make any difference whether the land is surveyed or unsurveyed at the date of definite location. The right of the Company attaches to each class alike on definite location, and survey thereafter is a mere ministerial act to ascertain and set apart the granted land.

What then was the necessity for this claim of the sixth section, and in what is it more than mere surplusage, if it has not a broader meaning than the one suggested? The odd sections granted, being, by the third section itself, protected after definite location, it follows that if any force or effect whatever is to be given to the clause in question in the construction of the act, it must be held to extend protection to the odd sections prior to definite location. Congress must not be presumed to have done a needless and unnecessary thing, as it certainly would have done had it protected rights by the sixth section, already fully and perfectly protected by the third.

An act of Congress must be so construed as to give force and effect, if possible, to all of its parts; and no two parts must be construed to mean the same thing, if a separate meaning can be assigned to each. (Sedgwick on Con. Stat. Laws, pp. 237-8. *Commonwealth v. Alger*, 7 Cush., 53-59. *McKay v. Detroit Plk. Rd. Co.*, 2 Mich., 138. *Ogden v. Simms*, U. S. Cir. Ct. N. Y., 2 Paine 584. *Dwarris on Statutes*, 568. 1 Black. Com., 189.)

So in the case under consideration, that construction which would make this clause of the sixth section in its legal effect a mere repetition of the third, must be rejected if any other reasonable construction can be found consistent with the objects of the act and the intention of Congress. None other is suggested than the one contended for by the road, and I am unable to discover any other. That one is reasonable, is according to the usual and accepted meaning of the words, is consistent with every other portion of the act and with the whole act, and is justified by the objects contemplated by Congress in making the grant. "The President of the United States shall cause the lands to be surveyed for forty miles in width, on both sides of the entire line of said road, after the general route shall be fixed, and as fast as may be required by the construction of said railroad, and the odd sections of land hereby granted shall not be liable to sale or entry or pre-emption before or after they are surveyed." Shall not be liable to entry. From what date? Clearly not from the passage of the act, for then not even the approximate location of the road was determined: not from the date of the definite location, as already shown, but evidently, from the date of the approval of the map of the general route, the designation of

which is provided for in connection with the clause in question, prior to the surveys directed to be made. It is argued with reason and force that the intention of Congress, in view of the difficulties that would inevitably be experienced in the construction of the road through a wild, uninhabited, and for the most part unsurveyed tract of country, intended to make a liberal and munificent grant of the public lands to the Company, and that it also intended to protect the grant so made from adverse disposition until the happening of the contingency upon which the right of the Company would vest. The Northern Pacific, unlike the Union Pacific Company, received no pecuniary aid in bonds of the government, and it is argued that this discrimination was intended to be affected by complete protection of the grant from outside appropriations until the line of the road could be definitely located. This view of the case is greatly strengthened by reference to the fact that no provision whatever is made in the act for the withdrawal of the land by executive order. It is reasonable to suppose that Congress in making this grant to aid the Company in building a railroad and telegraph line through an uninhabited and comparatively unknown country, intended to leave the lands granted open to adverse settlement until such time as the line should be definitely fixed on the face of the earth, while in the case of the Union Pacific (to which also pecuniary aid was given) and the case of almost every road ever aided by a land grant, the Secretary of the Interior was expressly directed to withdraw the lands granted upon designation of the general route. It is true that the power to order a withdrawal to protect the rights of the road was in the Secretary, independent of any special authorization, and that withdrawals under this act have actually been made. But suppose the Secretary had declined or omitted to make such withdrawal. Would there have been any protection whatever to the grant prior to definite location? Is it not reasonable to conclude that Congress, having omitted any special provision for executive withdrawal, and in view of the contingency suggested, intended to have this clause construed according to the usual and accepted meaning of its words, consistent with all other parts of the act and with the intention of the Legislature, and not as a mere repetition of what preceded it?

Upon a careful consideration of the whole question, I am of the opinion that this section of the act prohibits the sale, entry, or pre-emption, either before or after survey, of all odd sections within the prescribed limits, as shown by the map of general route, from the date of the filing of said map and its acceptance by the Department, and that all entries or locations made within these limits subsequent to that date should be cancelled, and the land held for the benefit of the road to award the filing of the map of definite location.

I recommend that the decision of the Commissioner be reversed.

Very respectfully,

W. H. SMITH, *Assistant Attorney General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, March 22, 1873, and decision of the Commissioner reversed.

No. 401.

TUNISON AND KENYON v. NORTH PACIFIC R. R. CO.

Held—That under the act of July 2, 1864, (13 Stat., 365,) the right attaches where the line is definitely fixed and a plat thereof filed in the General Land-Office.

And that the even sections only are raised to double minimum land.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., January 23, 1873.

SIR:—I have examined the question involved in the case of *Lafayette Tunison and John Kenyon v. The Northern Pacific Railroad Company*, on appeal from your decision of February 25th, 1872.

Two questions are passed upon in your decision, each involving a construction of certain portions of the act of July 2d, 1864, (13 Stats., 365,) making a grant of land to the Northern Pacific Railway Company.

The third section of the act referred to, granting lands to said Company in aid of the construction of said road, is in the following language:

"That there be and hereby is granted to the 'Northern Pacific Railroad Company' * * * * every alternate section of public land, not mineral, designated by odd numbers, to the amount of twenty alternate sections per mile, on each side of said railroad line, as said Company may adopt, through the territories of the United States, and ten alternate sections of land per mile on each side of said railroad, whenever it passes through any State, and whenever on the line thereof the United States have full title, not reserved, sold, granted, or otherwise appropriated, and free from pre-emption or other claims or rights at the time the line of said road is definitely fixed and a plat thereof filed in the office of the Commissioner of the General Land-Office." * * *

You construe this language to constitute a grant for the quantity of land specified, to take effect when the line of the road is definitely fixed, and a plat thereof filed in the General Land-Office.

The sixth section of the act referred to is in part as follows:

"And the reserved alternate sections shall not be sold by the Government at a price less than two dollars and fifty cents per acre, when offered for sale."

This you construe as raising the alternate *even sections* to the double minimum price of two dollars and fifty cents per acre, but as having no application to the odd sections within the limits of the grant.

In consequence of your construction of the act as given above, you rejected the claims of the appellants and directed the local officers at Vancouver, Washington Territory, to hold all lands in odd sections covered with pre-emption or homestead claims, at the date of withdrawal and subsequently, released or abandoned before filing of the map of definite location, as withdrawn for the benefit of said road: and where odd sections are so abandoned or released subsequent to such filing, to hold them for disposition under the general laws of the United States at one dollar and twenty-five cents per acre.

I affirm your decision in all respects as above recited, and return herewith the papers transmitted with your letter of December 3d, 1872.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 402.

BURLINGTON AND MISSOURI RIVER R. R. CO.

The question relates to the extent of the grant to this railroad under the 19th section of the act of July 2d, 1864. (13 Stat., 364.)

Held—That the company was entitled to ten alternate sections on each side of its road, and that if they could not be found within twenty miles it could go until it found ten such sections nearest to its line.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., October 30, 1871.

SIR :—I have considered the question referred to me for my opinion relating to the extent of the land grant made to the Burlington and Missouri River Railroad Company, in Nebraska, by the 19th section of the act of July 2, 1864. (13 Stat., 364.)

That section provides "That for the purpose of aiding in the construction of said road, there be and hereby is granted to the said Burlington and Missouri River Railroad Company, every alternate section of public land (excepting mineral lands, as provided in this act) designated by odd numbers to the amount of ten alternate sections per mile on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed."

The company have constructed one hundred miles of their road, and made application for the appointment of Commissioners to examine the first eighty miles, and are about to make their selection of lands under the grant. Before doing so, it desires that the extent of their grant shall be determined by the Interior Department.

The question for consideration is this: Does this 19th section grant to the Company ten alternate sections on each side of its road, and allow it to go to such distance as will include ten alternate sections nearest to the road, or does it limit the company to such alternate sections as may be found within the limits of twenty miles on each side of the road?

This question has been before the Interior Department twice before, and has received a different answer on each occasion.

Secretary Harlan, when called upon to withdraw the lands, held that the grant gave ten alternate sections nearest to the line of the road on each side thereof. Secretary Browning, when called upon to modify the withdrawal made by Secretary Harlan, held that the grant was limited to such alternate sections as could be found within the limits of twenty miles on each side of the road.

The language of this section is clear and explicit. It grants to the Railroad Company "every alternate section of public land designated by odd numbers to the amount of ten alternate sections on each side of said road, on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed." The word "amount" should receive its ordinary interpretation, and that is the *sum total* of two or more quantities.

Substituting the usual meaning of the word for the word itself, and the section would read, "There is hereby granted to said Railroad Company every alternate section of public land designated by odd numbers, to the sum total of ten alternate sections." There must be

not only ten alternate sections, but they must be such as have not been sold, or reserved, or otherwise disposed of by the United States, and such as are not subject to pre-emption or homestead claim at the time the line of the road is definitely fixed. If every alternate section within twenty miles on each side of the road were unsold, unreserved, and not otherwise disposed of by the United States, and were free from pre-emption and homestead claim at the time the line of the road was definitely fixed, then there would be a sufficient number of alternate sections to satisfy the grant. Otherwise the sum total of ten alternate sections could not be obtained without going more than twenty miles from the line of the road.

I think this 19th section should be construed to mean just what it says, and that is, that the Company is entitled to the number of ten alternate sections on each side of the road. The language is plain. The Supreme Court says that "where a law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction." *Fisher v. Blight*, 2 Cranch, 358, 359.

The construction which I give to this section is strengthened by an examination of other provisions in the acts of July 1, 1862, and July 2, 1864, making grants to the other roads provided for in said acts. Both of these acts should be construed together. They constitute the "Pacific Railroad" system of the United States.

It will be seen that Congress has employed very different language in making grants to the other companies, and has been careful to provide that only such alternate sections should be granted as were contained within certain limits.

The 3d section of the act of 1862 provides "That there is hereby granted to the said Company (the Union Pacific Railroad Company) for the purpose of aiding in the construction of said railroad and telegraph line, and to secure the safe and speedy transportation of the mails, troops, munitions of war and public stores thereon, every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad on the line thereof, and *within the limits of ten miles on each side of said road, not sold, reserved,*" &c.

The amount was afterwards increased to ten sections, and within the limits of twenty miles, by the 4th Sec. of act of 1864.

This grant applied to the Union Pacific, Central Pacific, Leavenworth, Pawnee and Western, Hannibal and St. Joseph, and Sioux City companies, all parts of the Pacific Railroad System.

The 17th section of the act of 1864 amended the act of 1862, relating to the Sioux City branch, and provided that "said road shall be entitled to receive alternate sections of land for *ten miles in width*, on each side of the same along the whole length of said branch."

The 18th section of the same act authorized the Burlington and Missouri River Company to construct its road through the Territory of Nebraska, and the 19th Section is the one containing the grant of lands to that road.

The language of the 17th and 19th sections, the one making a grant to the Sioux City, and the other to the Burlington and Missouri River Company, is so different that it is impossible to suppose that the grants were intended to be identical.

The true reason for the difference in the grants was, doubtless, that bonds were given to the other roads and none to the Burlington and Missouri Company. The 20th section, act of 1864, provided: "That no Government bonds should be issued to the said Burlington and Missouri River Railroad Company to aid in the construction of said extension of its road."

It has been suggested that the proviso to the 4th section of the act of 1864, prohibiting timber from being taken from certain lands lying more than ten miles from the centre line of any of said roads, supported the construction that the grant was limited to twenty miles on each side of the road. Section 3, Act of 1862, exempted mineral lands from the grant, but gave any timber on the same to the railroad. This was amended by the 4th section of the act of 1864, by limiting the grant of timber to such as was on lands lying within ten miles of the centre line of the road. The same section gave the right to take alternate sections for the road within twenty miles on each side thereof. I do not find any support for the claim in this section.

To my mind it is clear that the Company is entitled to ten sections on each side of its road, and that it may go more than twenty miles from the road to find them, if they cannot be found within that limit.

Very respectfully,

W. H. SMITH, *Ass't Att'y General*.

HON. C. DELANO, *Secretary of Interior*.

Concurred in by the Secretary, Nov. 15, 1871.

No. 403.

ST. PAUL AND SIOUX CITY R. R. v. HALVERSON.

Held—That the right of the Company attached to the indemnity lands when the line of the road was definitely fixed; that it was definitely fixed when the line was run on the face of the earth and adopted by the Company; that the above is the time, and not the date of the Governor's certificate.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 2d August, 1872.

SIR:—I have considered the application of the St. Paul and Sioux City R. R. Co., to take as an indemnity selection the S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, and S. E. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, Section 21, T. 103, R. 35, covered by the pre-emption filing of Conate Halverson made July 12, 1860, alleging settlement June 15, 1860.

The land is in an odd section within the fifteen-mile indemnity limits of the grant to the road, act March 3d, 1857. (11 Stat., 195.) The line of the road past this section was definitely located on the face of the earth Oct. 31, 1858, and the map thereof was certified by the President and Chief Engineer of the Company, as having been "made in pursuance of orders of the Board of Directors," on March 5, 1859. The road has since been built on this line.

The Governor of Minnesota forwarded the said map of definite location with a letter dated April 5, 1859, in which he states that he had attached his official certificate of approval to the map. But it appears as a matter of fact that his certificate was not then attached, and was not procured until July 14, 1865. Halverson and his wife occupied the land until August 21, 1862, when they were both killed by Indians.

The land has since been unoccupied. His filing, however, was not cancelled until after July 14, 1865. In your decision you hold that the right of the road did not attach until the map of definite location was approved by the Governor, and that the land in question being then covered by a pre-emption filing, was excluded from the grant to the road. I have heretofore held, when considering grants similar to the one to this road, that the line of route became definitely fixed when it was run upon the face of the earth and adopted by the board of directors of the road, and that the right of the company then vested, both as to sections in place and indemnity sections. (See Opinions of Asst. Atty. Genl. Smith, adopted by me in case of *Kansas Pacific R. R. v. Union Pacific Southern Branch R. R.*, dated Oct. 3d, 1871 [No. 397]; and in *ex parte Atlantic and Pacific R. R.*, dated April 1st, 1872.)

I think in this case the line of road became definitely fixed, at least as soon as March 5th, 1859, and perhaps prior to that date.

There is nothing in the act that requires the approval of the Governor to the maps of definite location, and it is clear to my mind that the date of his certificate should not be taken as the date of definite location.

The settlement and filing of Halverson were both subsequent to the time the line of the road was definitely fixed, and therefore cannot operate to exclude the land from the grant to the road.

I reverse your decision, and herewith return the papers in the case transmitted with your letter of the 18th of April last.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 464.

FLINT AND PERE MARQUETTE R. R. CO.

Certain townships were reserved by treaty for certain Indians to make selections from, during the period of ten years. These townships were withdrawn by the Secretary of the Interior. A grant was made to this railroad with the usual proviso as to lands reserved, etc., at the time the line of the road was definitely located. It was definitely located before the expiration of the ten years.

Held—That the lands which remained after the Indians had made their selections, at the end of the ten years, were “reserved,” and did not go to the railroad.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 7th December, 1872.

SIR:—I have examined the appeal of the Flint and Pere Marquette Railroad Company, from your decision of July 24th, 1872, adverse to its claim to certain lands in Townships 15, 16, 17 and 18 N., R. 16 W., Michigan.

The facts in the case are as follows: On the 31st day of July, 1855, (11 Stats., 621,) the United States and the Ottawa and Chippewa Indians, of Michigan, entered into a treaty, by the first article of which (as amended April 15th, 1856) the United States agreed “to withdraw from sale for the benefit of said Indians,” as thereafter provided, with other lands named, Townships 15, 16, 17 and 18 N., R. 16 W. The lands thus agreed to be withdrawn for the purpose specified, were to be disposed of, under the further provisions of article one, as follows: Each

Indian of the Grand River Bands to receive therefrom a certain quantity of land, according to his status as the head of a family, single man, etc., to be selected by him within the tract so reserved, according to legal subdivisions; at the end of five years all lands embraced in the withdrawal, not selected or appropriated, to remain the property of the United States, and be thereafter for the further term of five years, subject to entry as other public lands, by Indians only; and all lands at the end of said second period of five years then remaining unappropriated or unsold to be disposed of by the United States as other public lands.

The tracts in controversy, Townships 15, 16, 17 and 18 N., R. 16 W., were withdrawn in compliance with the provisions of the treaty above recited, were applied to the purposes specified, the period of ten years has elapsed, and such tracts as remain undisposed of are now held for disposition as other public lands.

July 3d, 1856, Congress made a grant (11 Stat., 21) of public land to the State of Michigan, in aid of certain contemplated railroads therein named, to be thereafter constructed. This grant was in the usual form for grant in place and indemnity, with the following proviso: "That any and all lands heretofore reserved to the United States by any act of Congress, or in any other manner, by competent authority, for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever, be and the same are hereby reserved to the United States from the operation of this act * * * ." The State of Michigan by legislative enactment conveyed a portion of its grant, in accordance with its terms, to the Flint and Pere Marquette Railroad Company. The Company accepted the grant and definitely located its line through the land in controversy prior to the expiration of the ten years during which the provisions of the treaty above referred to were in full force and effect.

Under this statement of facts, the Flint and Pere Marquette Railroad Company now claim that portion of the townships above named, which remained undisposed of at the expiration of ten years from the time selections were first allowed under the treaty; and in support of this claim it is contended that the proviso above quoted affected in its operation only lands afterwards actually selected or entered by Indians during the ten years, and that all tracts remaining undisposed of at the expiration of that time inured to the road under its grant.

You decided adversely to the claim of the company, and appeal has been taken to this office.

I agree with you in the conclusion that the withdrawal of the tracts named, under the provisions of the treaty, was "reservation" of the same within the meaning of the proviso to the railroad grant. (*Walcott v. Des Moines Co.*, 5 Wall., 681.)

The language of the proviso is "heretofore reserved to the United States by any act of Congress or in any other manner by competent authority for the purpose of aiding in any object of internal improvement, or for any other purpose whatsoever."

The lands in question were withdrawn from market, and thus reserved to the United States, acting as a trustee for the Indians, to accomplish certain uses.

The withdrawal was made in conformity to requirements of a treaty, by the Secretary of the Interior, the duly authorized officer of the Government for that purpose. This was a reservation to the United States by competent authority. It was also a reservation for a certain speci-

fied purpose, viz: the execution of the obligations imposed by treaty. It was therefore a reservation to the United States by competent authority, for a certain purpose, and as such comes within the plain language of the proviso.

The distinction which, in argument, is sought to be drawn between a withdrawal for a purpose which has been accomplished and a reservation, has no solid foundation for its support. It is clear that by whatever name the particular act is described, it was in effect a reservation to the United States by competent authority for a certain purpose. Nor does the fact that the purposes of the trust have been accomplished, and the amount of land actually withdrawn found to be in excess of that required, change the legal status of the tracts in excess, as reserved lands at the date of the grant. The entire four townships named were withdrawn for the purpose specified, and it makes little difference whether or not all that was withdrawn was required to execute the trust. The question is merely one of reservation prior to the grant, and I am unable to see how the withdrawal, in the way specified, can by any possible construction be limited, as a reservation to those tracts actually selected within the ten years. I am clearly of the opinion that the land in controversy is within the operation of the proviso; but if any doubt existed, it would be dispelled by the legislative interpretation given to the grant by the act of Congress of June 10th, 1872, which provides for the restoration to market by regular notice of the lands thus remaining undisposed of under the treaty, with the express proviso that no lands so restored should be subject to or taken under any railroad grant.

I affirm your decision and return herewith the papers transmitted with your letter of October 29th, 1872.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 405.

C. C. SHEATS.

The Supreme Court decided in case of *Schulenberg et al. v. Harriman*, that by act of June 3, 1856, title passed at once to the State of Wisconsin, attached to the particular lands by location of the railroads, and notwithstanding a failure to build the road, still remains in the State, and that a provision for reversion cannot operate until a declaration of forfeiture by an authorized judicial proceeding, or by Congressional assertion of ownership.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 23, 1875.

HON. C. C. SHEATS, *House of Representatives.*

SIR:—I have the honor to state, in reply to your letter of 19th inst., that this Office cannot undertake to give an opinion upon the questions presented by you, without the presentation of a specific case requiring action at the hands of the Department.

Respecting the decision of the Supreme Court in the recent case of *Schulenberg et al. v. Harriman*, I have to say that it seems to hold: That by the Act of June 3, 1856, title passed at once to the State,

acquired precision and attached to particular lands by the definite location of the road, and remains in the State, notwithstanding a failure to build the road within the period prescribed by the act. It announces further: That the provision for reversion is a condition subsequent, and cannot operate until a declaration of forfeiture either by some judicial proceeding authorized by law, or by legislative assertion of ownership on the part of the Government; and if this be not enforced, the title remains unimpaired in the grantee, and the power to sell continues as before the breach of condition, limited only by the objects of the grant and the manner of sale prescribed in the act.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 406.

CIRCULAR,

Showing requirements of the first section of the Act of March 3, 1875, "Granting to railroads the right of way through the public lands of the United States." (Part II., No. 139.)

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 30, 1875.

The first section of the act approved March 3, 1875, (18 Stat., 482.) "Granting to railroads the right of way through the public lands of the United States," requires a copy of the articles of incorporation of railroad companies claiming the benefits of the act to be filed with the Secretary of the Interior, together with *due proofs* of organization under such articles.

For the government of parties in interest, the following regulations have been adopted as to what shall constitute and be filed as said *due proofs*:

1. A copy of the State or Territorial law under which the company was organized, with certificate of the Governor or Secretary of the State or Territory, that the same is the existing law now in force.
2. When said law directs that the articles of association, or other papers connected with the organization, be filed with any State or Territorial officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.
3. The official statement, under seal, of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the road according to the existing law of the State or Territory; and that the copy of the articles filed with the Secretary of the Interior is true and correct.
4. A true list, duly verified by the sworn statement of the president, under the seal of the company, showing the names and designation of its respective officers at the date of the presentation of the proofs at this Department.

C. DELANO, *Secretary.*

II. VERSUS HOMESTEADS.

No. 407.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 15, 1872.

TO REGISTERS AND RECEIVERS OF DISTRICT LAND OFFICES.

GENTLEMEN:—Under the provisions of the acts of Congress granting lands in aid of construction of railroads, wherein there are exempted from such grants the lands to which a valid right of Pre-emption or Homestead had attached at the time when the grant may have become effective, the Honorable Secretary of the Interior has ruled that the lands to which such Pre-emption or Homestead claim or right had attached, and the claim has subsequently been abandoned, do not inure to the railroad grant, but revert to the United States.

A Pre-emption or Homestead claim of record is of course *prima facie* evidence of a valid right, yet it may occur that such claim had a fraudulent inception, or that the claimant had given up and actually abandoned his claim at the date when the grant became effective. In such cases the Department holds that there exists no valid Pre-emption or Homestead claim, and that the land inures to the grantee. It must be understood, however, that a railroad cannot take land covered by a Homestead or Pre-emption unless it is clearly shown that the same was abandoned by the party at the time the grant attached.

In view of these rulings, the following is communicated for your information and government, to the end that the rights of all parties may be protected and the spirit of the grants fully complied with:

First. In relation to Pre-emption claims: The Pre-emption laws require that a person must be over the age of twenty-one years, or the head of a family, a citizen of the United States, or a person who has filed a declaration to become such, &c.; and also that he must have settled upon the land claimed, thus imposing conditions as prerequisite to the filing of a claim.

Second. In relation to the Homestead claims: The law requires that a person must be over twenty-one years of age or the head of a family, a citizen of the United States, or one who has declared his intention to become such, &c., and under the first and third sections of the amendatory act of March 21, 1864, the persons claiming the benefit of said sections must make settlement upon the tracts before they can obtain the benefit of said sections. Therefore, as the fraudulent character of a Pre-emption or Homestead claim in its inception may be brought in question, it is right that the parties in interest should have an opportunity, in all cases, to be heard. With this view you are required—

Third. When application is made by the agents of a railroad company to select lands on which Homestead entries or Pre-emption claims are of record and uncanceled, but which they allege were either fraudulent in their inception or abandoned prior to the time when the grant to the railroad attached; or where parties apply to contest and set aside Homestead entries or Pre-emption claims on lands withdrawn for railroads, you will order hearings to determine the rights of the parties, giving them at least thirty days' notice in writing, of the time and place of such hearing, if their whereabouts are known, or if they can be reached by such notice. If they cannot be found you will cause such

notice to be given by publication at least once a week for four consecutive weeks in the newspaper having the largest circulation in the vicinity of the land. Where application is made by a railroad company to select land on which Homesteads or Pre-emptions have been heretofore made and cancelled for abandonment or relinquishment, and no other claim has since been allowed thereon by direction of this office, you will permit the company to file with their applications evidence of the fact that the land was abandoned or relinquished prior to the date when the right of the railroad attached under the grant.

Fourth. When, by direction of this Office under its interpretation of the rulings of the Department, second entries or filings have been allowed within railroad limits upon lands previously covered by Homesteads or Pre-emptions, after the cancellation of the same, such second entries or Pre-emptions will not be affected by this modification of previous decisions, but will, upon proof of compliance with the requirements of the Homestead or Pre-emption laws, be approved and patented. Where hearings have heretofore been had under our circular of November 7, 1871,* you will report the cases, and they will be decided in accordance with the rules and principles of said circular; but if hearings have been ordered and not yet had, you will revoke the orders and proceed under this circular. At the hearings your inquiries should be directed to the personal qualifications of the original claimant, and his compliance with the law in the matter of settlement and cultivation. You will be careful that all material facts are brought out, and, if necessary to this end, you will yourselves examine and question the witnesses. The record of the hearing should be prefaced by evidence of notice to all parties in interest, as required in other contested cases.

Parties initiating a contest must make provision for defraying the expenses thereof, but when the case comes before you for trial, you can apportion the costs according to the equities of each case. At the close of the hearing please forward all the papers to this Office, with your joint opinion thereon.

Your particular attention is called to the fact that in some of the earlier railroad grants, lands covered by Homestead claims which may be subsequently cancelled are not excepted from the operation of the grant. Therefore, in such cases the tracts inure to the grant, and you will recognize no applications for such lands by other parties, but will pay due regard to the rights of the grantees.

You will in no case allow a Pre-emption filing or Homestead entry on the class of lands covered by these regulations, without instructions from this Office.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

Approved: C. DELANO, *Secretary of the Interior.*

See No. 394.

* No. 420.

No. 408.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Sept. 8, 1873.

GENTLEMEN:—In my official circular of August 15, 1872, it is provided as follows:

“Where application is made by a Railroad Company to select land on which Homesteads or Pre-emptions have been heretofore made and cancelled for abandonment or relinquishment, and no other claim has since been allowed thereon by direction of this office, you will permit the company to file with their applications evidence of the fact that the land was abandoned or relinquished prior to the date when the right of the railroad attached under the grant.”

By the operation of law limiting the period within which proof and payment must be made in pre-emption cases, such claims are constantly expiring, the settler not appearing within such time to consummate his entry.

These expired filings are classed with those actually abandoned or relinquished, and fall within the above instructions, unless explicit allegations are filed tending to show good faith in the settler until the definite location of the road, and that the failure to comply with the law dates from a subsequent period. In these latter cases, hearings are required to ascertain the facts.

This office has recently been flooded with *ex parte* affidavits, forwarded from district offices, concerning this class of lands, and purporting to have been filed by various parties, agents and attorneys of railroad companies, for the purpose of proving abandonment by pre-emption claimants prior to the definite location of their respective roads.

By proper attention to the instructions in said circular you will observe that it is no part of your duty to receive these *ex parte* statements when presented in this irregular manner. They constitute no part of the files required for your office or for the General Land-Office, except when presented with the proper lists embodying the “application to select” the lands as a part of the grant to the railroad company.

The clerical force of this office is too limited to permit an examination in this desultory, irregular way, of the thousands of affidavits, and hundreds of letters of transmission, inquiries of attorneys and agents respecting the same, and other papers connected therewith, thus received.

You will, therefore, refuse hereafter to receive such papers, and if they reach you by mail you will return them to the parties offering them—except when filed to accompany regular applications to select, with proper lists of the lands to which they relate, as provided for in the circular referred to.

Those already transmitted to this office will be closed out by examination.

Those sent hereafter will be returned without action, unless expressly relating to lands included in lists already on file, and filed for the purpose of clearing such lists from suspension, in which case they may be received by you and transmitted, with a particular specification of the lists to which they refer.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

Register and Receiver.

See No. 394.

No. 409.

BOYD v. BURLINGTON & MISSOURI RIVER R. R. CO.

At the time the line of the railroad was definitely fixed, Hinks had a homestead claim on the land in controversy.

After that he abandoned his claim, and Boyd made application to enter the tract.

Held—That the land reverted to the United States upon the abandonment by Hinks, and was subject to entry by Boyd.

Cites: 13 Stats., 364. *Wolcott v. Des Moines*, 5 Wallace, 681. Opinion of Attorney General Akerman of March 7th, 1871, in the case of *Sargeant et. al. v. Western R. R. Co.* (No. 432.)

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, April 28, 1871.

SIR:—As requested by you I have considered the appeal of Samuel M. Boyd from the decision of the Commissioner of the General Land-Office, and will now proceed to state the conclusion to which I have arrived. The facts are these: Mr. Boyd has made an application to enter the south-west quarter of section 35, Township 10 North, Range 6 East, being one of the subdivisions of an odd-numbered section within the limits of the grant to the Burlington & Missouri River Railroad, in the State of Nebraska.

The grant is found in section 19, act of July 2d, 1864, 13 Stats., 364, hereinafter quoted.

It is admitted by all parties contesting Boyd's right of entry, that at the time the line of said road was definitely fixed, one John C. Hinks had a homestead claim on said land, and that he abandoned this claim in a short time after the road was located and before the application of Boyd.

It will thus be seen that the only question in the case is this: Did the land after Hinks' abandonment belong to the Railroad or revert to the Government?

I think the latter. I think it is excluded from the grant by its terms. The language is "that there be and hereby is granted to said Burlington and Missouri River Railroad Company every alternate section of public lands (excepting mineral lands as provided in this act) designated by odd numbers, to the amount of ten alternate sections per mile on each side of said road on the line thereof, and not sold, reserved, or otherwise disposed of by the United States, and to which a Pre-emption or Homestead claim may not have attached at the time the line of said road is definitely fixed."

The plain meaning of this enactment is that ten alternate sections are granted to this road for every mile it may construct; but these sections must be such as have not been sold or reserved for any purpose, or otherwise disposed of by the United States, or subjected to any pre-emption or homestead claim; and that there may be no doubt as to the time when this pre-emption or homestead claim shall exclude the lands from passing to the company, it is provided that it shall be "at the time the line of road is definitely fixed."

If the homestead claim has attached at the time the line of the road is definitely located, then the railroad is excluded. It would seem to be immaterial what became of the claim after that, whether it was perfected or abandoned.

In the case of *Wolcott v. Des Moines Company*, 5 Wallace 681, the Supreme Court held that lands which had been reserved by the proper

officers of the Land-Office for the improvement of the Des Moines River was excluded from the subsequent grant to the State of Iowa for the purpose of aiding in the construction of said road, although such land was not included in the grant for the improvement of the Des Moines River, and therefore was reserved upon an erroneous construction of the law. This is a very strong case, and seems to me to be decisive of the principle involved in the one now under consideration. See also opinion of Attorney General Akerman of March 7, 1871, in the case of *Sargeant et al. v. The Western Pacific Railroad Company*.

These authorities confirm me in the construction that I should otherwise be disposed to adopt, and lead me to hold that the land in controversy was excepted from the grant to the railroad, and was therefore subject to entry by Boyd. I advise reversal of the decision of the Commissioner of the General Land-Office.

Very respectfully, your obd't servant,

WALTER H. SMITH, *Assistant Attorney General*.

HON. C. DELANO, *Secretary of the Interior*.

Concurred in by the Secretary, April 28, 1871.

No. 410.

BOYD v. BURLINGTON AND MISSOURI RIVER R. R. CO. (Explanatory.)

Held—That the rule in the Boyd case applies to lands within the "indemnity limits."

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, July 21, 1871.

SIR:—I have examined the question submitted by the letter of the Commissioner of the General Land-Office, of the date of July 10, 1871. The Commissioner desires to know whether the principle decided in the case of *S. M. Boyd v. The Burlington and Missouri Railroad*, will apply to lands lying within the "indemnity limits" of grants to railroads. In that case the Department held, in accordance with my advice, that lands to which a homestead had attached at the time the line of the road was definitely located, were excluded from the grant, and that upon a subsequent termination of the homestead claim they reverted to the Government, and did not go to the railroad. The question put by the Commissioner does not relate to the grant to any particular road, but is a general one. I should have preferred to have had it relate to some particular road, and to the grant made to that road, as the language employed in making the grants to the several roads is not always uniform, although it is generally so.

In answering this question, I shall assume that it relates to grants made in the language usually employed.

I am of opinion that the rule applied to lands "in place" should be applied to the lands within the "indemnity limits."

Very respectfully,

W. H. SMITH, *Asst. Atty. General*.

HON. C. DELANO, *Secretary of the Interior*.

Opinion adopted by the Acting Secretary, July 21, 1871.

No. 411.

ATCHISON, TOPEKA AND SANTA FE RAILROAD v. CATLIN AND FRANK.

Held—That the rule in the Boyd case applied to the indemnity limits of this road, 12 Stat., 772.

Held also—That if the facts of each particular case show that the homestead entry was originally fraudulent, it was void, and did not operate to take the land from the railroad.

In this particular case the homestead claimant made his entry and did absolutely nothing more, but let the seven years expire and forfeited his claim.

The line of the road was not definitely located until nearly (6) six and a half years after the homestead entry.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., May 1st, 1872.

SIR:—I have considered the application of the Atchison, Topeka and Santa Fe Railroad Company for the cancellation of homestead entries No. 125, made by Russell A. Catlin upon the E. $\frac{1}{2}$, S. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$, S. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$, S. W. $\frac{1}{4}$, of Section 27, T. 19, R. 3 E., and No. 124 made by Philip Frank upon the N. W. $\frac{1}{4}$ Sec. 35, in the same township, in the State of Kansas. These lands lie within the indemnity limits of said road, and the company asks to be allowed to select them as indemnity lands. The homestead applicants made their respective entries on the 20th day of March, 1863, and from that date to this have done nothing whatever to perfect their claims. More than seven years had expired from the date of said entries before the Railroad made said application. The line of the road was definitely located in said township nineteen on the 7th of August, 1869, being six years, four months and eighteen days after the homestead filings were made.

The act of March 3, 1863 (12 Stat., 772), granted to the State of Kansas, for said road, every alternate section of land designated by odd numbers, for the sections in width on each side of said road, and it provided that, in case it should appear that the United States had, when the line of said road should be definitely fixed, sold any section or any part thereof, granted as aforesaid, or that the right of pre-emption or homestead settlement has attached to the same, or that the same has been reserved by the United States for any purpose whatever, then it shall be the duty of the Secretary of the Interior to cause to be selected, for the purposes, from the public lands of the United States, nearest to tiers of sections above specified, so much land in alternate sections or parts of sections, designated by odd numbers, as shall be equal to such lands as the United States have sold, reserved, or otherwise appropriated, or to which the rights of pre-emption or homestead settlements have attached as aforesaid: *Provided*, That the land to be so selected shall in no case be located further than twenty miles from the lines of said roads and branches.

The question intended to be presented in this case, is whether the rule adopted in the Boyd case shall be applied to indemnity lands as well as to lands in place.

I am of opinion that it should be so applied. For my reasons I refer to my opinions of April 1, 1872, in the case of the Atlantic & Pacific Railroad Company. (Vol. I., Opinions Assistant Attorney General, p. 480.)

But while I thus think, I am also of opinion that the homestead

entry, in order to exclude the land filed on from the granted indemnity limits, should be a valid and *bona fide* homestead claim, at the time the line of the road is definitely fixed.

If the facts of each particular case show that at the time of such definite location the entry was not then a valid subsisting claim, or was not made in good faith, but was fraudulent, then such entry should not be allowed to exclude the railroad from what otherwise would be conceded to it.

In the case now under consideration the homestead claimants had made their respective filings nearly six years and a half before the definite location of the road, and during all that period had done absolutely nothing towards making good their claim.

They made no settlement, no improvement, no residence, no anything. Nor have they yet done anything. Their claims have lapsed by the expiration of the seven years given by the homestead law. This state of fact leads irresistibly to the conclusion that at the time the road was definitely located the homestead entries in question were not valid subsisting claims.

I think they should be cancelled, and the road allowed to select the lands as indemnity, and I so advise.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Opinion adopted by the Secretary, Aug. 1, 1872.

No. 412.

MISSOURI, KANSAS AND TEXAS R. R. v. BLOCK.

Held—That a homestead claim to exclude land from a railroad grant must be subsisting at the time the road was definitely located and capable of being perfected: That a delay of three and a half years from the filing and going upon the land to reside, defeated the homestead claim, the road having been located at the expiration of 3½ years, and before actual residence.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 15th August, 1872.

SIR:—I have considered the case of the *Missouri, Kansas and Texas Railroad Co. v. John Block*, involving the validity of Block's homestead entry, made May 19, 1863, on the W. ½ of N. W. ¼, section 25, T. 14 S., R. 5 E., Junction City, Kansas, coming up on appeal by the railroad.

Block made his application whilst in the military service of the United States. He was discharged June 13, 1865.

He cut some logs for a house, and did some breaking on the land during the summer of 1866. He broke and cultivated an additional quantity of land in 1867, but had no personal residence thereon until August, 1868, when he married, moved upon the tract, and has remained there, cultivating and improving it since that time. His improvements are valued at \$800. Having failed to reside upon the land for five years from date of his application, and three years from date of his discharge from the military service, you very properly, in your decision of May 27, 1871, ordered the cancellation of his entry, and from this decision he has not appealed.

The land is on an odd section within the limits of the grant to the

railroad, made by act of July 26th, 1866 (14 Stat., 287). The line of the road was definitely fixed Nov. 17, 1866, and the lands were withdrawn by letter from your office, dated March 19th, 1867, and received at the local office, April 1st, 1867.

By the terms of the grant, lands to which a homestead right has attached at the time of definite location of the road, are excluded from going to the company.

I have heretofore held that the homestead right, which operates to exclude the lands from the grant, must be at the time of the definite location of the road, a valid and subsisting right, and capable of being perfected into a complete title. If the homestead claim be such a one as the Board would confirm, it is such a claim as would exclude the grant from going to the road, because it is a claim recognized by the law as capable of being perfected.

In the present case there was a period of nearly three years and a half between the homestead filing and the definite location of the road, and during all that time the homestead claimant failed to reside on the land.

I think the claim was not such a homestead claim as should defeat the grant to the road.

I therefore reverse so much of your decision as was adverse to the railroad. The papers are herewith returned.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 413.

SOUTHERN MINNESOTA R. R. CO. v. PARKS AND SHROEDER.

A homesteader who makes his entry in good faith has six months in which to establish his residence, and the tract embraced in such entry is excepted from the grant to a railroad definitely located during the said six months, even if the homestead is afterwards abandoned.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Oct. 20, 1874.

SIR:—I have examined the case of the *Southern Minnesota Railroad Company v. Elparen Parks*, involving title to the N. W. $\frac{1}{4}$, sec. 21, T. 102, R. 23 W., Jackson, Minn., on appeal from your decision of March 10, 1874.

This tract is within the limits of the grant to the above-named railroad company, which was definitely located along the same on the 29th of November, 1866. John Hall made homestead entry of the premises on the 20th of Aug., 1866, and his entry was cancelled on the 22d of Jan., 1872.

Elparen Parks made his homestead entry on the 14th of March, 1872. The land enures to the railroad, unless it was excluded from the grant by reason of the homestead entry of Hall, and whether it was excluded or not depends upon the question whether the entry was at the date of definite location of the road a subsisting and valid homestead entry. I think it was. The claimant was not, then, in default. He had fully complied with the law. He had not taken up his residence on the land, but he was allowed six months in which to make such residence, and

the time had but little more than half expired when the line was definitely located.

There is nothing in the case to indicate bad faith on the part of Hall; but on the contrary, the evidence, so far as it goes, shows good faith.

He seems to have made some improvements on the land in the fall of 1866, and early in the spring of 1868 he commenced digging a cellar for his house.

It is clear that he had no intention of giving up or abandoning the land until after he commenced the digging of his cellar, and that was many months after the definite location by the railroad company.

I am of opinion that this tract of land was excluded from the grant to the railroad, and therefore I reverse your decision, and award it to the contestant, Parks.

The papers transmitted with your letter of July 21, 1874, are herewith returned.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

To the Commissioner of the General Land-Office.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Oct. 30, 1874.

SIR:—I have examined the case of the *Southern Minnesota Railroad Company v. Henry Shroeder*, involving title to the W. $\frac{1}{4}$ S. W. $\frac{1}{4}$, sec. 23, T. 102, R. 25 W., Jackson, Minn., on appeal from your decision of March 13, 1874.

This tract is within the limits of the grant to the road, which took effect Nov. 28, 1866. Shroeder made homestead entry of the same Oct. 12, 1871. The right of the road did not attach because one Jude E. Losenjer had made homestead entry of the said S. W. $\frac{1}{4}$ July 18, 1866, and the six months allowed for time to establish his residence on the land had not expired at the date of the definite location of the road, Nov. 29, 1866. His entry was valid at said last-named date, and could have been perfected. (See *South. Minn. R. R. Co., v. Elparen Parks*, decided October 20, 1874.)

I reverse your decision, and herewith return the papers transmitted with your letter of July 27 last.

Very respectfully,

C. DELANO, *Secretary.*

To the Commissioner of the General Land-Office.

No. 414.

SAYRE v. ATCHISON, TOPEKA & SANTA FE R. R.

Held—That a homestead entry, made before the definite location of the road, but which had been relinquished in writing before such definite location, although the entry was not cancelled until after location, did not take the land from the railroad.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 13th November, 1873.

SIR:—I have considered the case of *Thomas P. Sayre, homestead claimant, v. Atchison, Topeka, and Santa Fe Railroad Company*, involving the right to the S. $\frac{1}{2}$, N. E. $\frac{1}{4}$, and N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$, Section 25,

Tp. 21, R. 5 E., and S. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$, Section 30, Tp. 21, R. 6 E., Salina District, Kansas.

The land is within the limits of the grant to the Railroad Company, the line of which was located past said land, and the right attached thereto, not later than July 13, 1869.

Sayre's entry was made August 16, 1869. In your decision of December 11, 1872, you rejected his entry because the land had previously passed to the Company.

From this decision he has appealed, claiming that at the time the line of the road was definitely located the tracts in question were covered by the subsisting homestead entry of one William Renfro, which was not cancelled until July 27, 1869, and subsequent to the definite location of the road, and that said tracts were thereby protected against the claim of the road and reserved to the government, and that they are now subject to his entry.

An examination of the records of your office shows that William Renfro formally relinquished his entry of said tracts in writing, June 29, 1869, and acknowledged the same before the Register, after which his entry was not a valid subsisting claim, capable of being perfected, and therefore not sufficient to take the land it covered out of the grant to the road. The fact that the entry was not formally cancelled by your office until after the definite location is not material.

I affirm your decision, and return the papers in the case transmitted with your letter of July 8th last.

Very respectfully,

C. DELANO, *Secretary.*

HON. W. DRUMMOND, *Commissioner of General Land-Office.*

No. 415.

**ARNOLD v. MISSOURI, KANSAS & TEXAS AND LEAVENWORTH,
LAWRENCE AND GALVESTON RAILROADS.**

Arnold filed pre-emption claim and afterwards, January 3, 1861, entered into the United States army and was honorably discharged January 16, 1865.

In April, 1865, he commuted to homestead and made final proof September 13, 1871. Land "offered" land. Had one year from settlement to make proof and pay up, and upon failure land forfeited unless subsequent proof and payment should be made before the initiation of adverse right. Adverse right of railroad attached.

When homestead filing was made, the land was not then subject to homestead entry.

The act of March 21, 1864, sec. 5, is prospective in its operations, and not retroactive.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 7th May, 1872.

SIR:—I have considered the case of *Joseph W. Arnold v. Missouri, Kansas & Texas and Leavenworth, Lawrence and Galveston Railroads*, involving the right to enter S. E. $\frac{1}{4}$, Sec. 25 T. 24 S., R. 17 E, Humboldt, Kansas, on appeal from your decision of October 10th, 1871.

Arnold having filed for the tract in controversy under the general pre-emption law, January 3d, 1861, enlisted in the army of the United States, from which he was honorably discharged January 16, 1865. In April, 1865 he was allowed to enter the land as a homestead, and on the 13th day of September, 1871, he made final proof.

The land in controversy was "offered" at the time of Arnold's pre-emption filing. He had therefore one year from the date of this settle-

ment to make proof and payment. Having failed to do this, his pre-emption right was then determined, unless subsequently saved by such proof and payment before the initiation of any adverse right. Proof and payment were never made, and an adverse right has arisen in the railroads. While Arnold made his homestead entry, he attempted to initiate a new right, (for he had no pre-emption right to commute) and this attempt must fail because the land claimed was not at that date of a class subject to homestead appropriation.

The act of March 21st, 1864, section 5, applies to cases of this kind, arising subsequent to its passage; but it has no retroactive effect, and does not relieve the great hardship which this necessary construction of law works upon Arnold, who has in good faith cultivated and improved a homestead to which he had every reason to believe his title was good.

I affirm your decision, and return herewith the papers transmitted with your letter of the 5th ultimo.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 416.

NICKELL ET AL. V. ST. JOSEPH AND DENVER CITY R. R. CO.

The entries of these parties were allowed under a ruling of the land-office then in force, to the effect that the railroad acquired no right to lands until the notice of withdrawal was received at the local office.

The Commissioner directed them to be cancelled, pursuant to a later ruling of the Department on this subject.

Held—That the ruling was intended to be prospective in its operation and not to disturb past transactions.

Secretary's decision dated Sept. 3, 1872.

No. 417.

MISSOURI, KANSAS AND TEXAS R. R. V. BROCK ET AL.

Held—That the rule of construction adopted and in force at the time, a patent was *executed* should be followed, and the case considered as *res adjudicata*, although subsequent to such execution a new rule had been adopted.

But in all cases where a patent had not been executed, the rule of construction in force at the time of the hearing in all its stages and before any proper officer or officers, should be applied, although the proceedings might have been commenced under a different rule.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 17th July, 1873.

SIR :—I have examined the questions presented by your letter of April 14th, 1873, transmitting the appeal of the Missouri, Kansas and Texas Railroad Company from recent decisions of your office refusing to cancel certain homestead entries made of lands within the limits of its grant, subsequent to the definite location of the line of the road, but prior to the order of the Secretary withdrawing the land from market.

Your action in this case is based upon a construction of law supposed to have been adopted by the Acting Secretary in the recent cases of A.

W. Nickell et al. and Frank Hatke v. the St. Joe and Denver Railroad Company.

I learn from the Acting Secretary, who decided said cases, that he did it with the understanding that patents had actually been issued in each of them, in accordance with the construction of law adopted by the Department and in force at the time the patents were issued. In point of fact, however, patents had not issued in said cases, or either of them, and the decisions of the Acting Secretary are capable of a construction never intended for them, and have led to some confusion between your office and the Department, resulting from the mistake of fact upon which they were founded. It was intended to be held in said cases, that inasmuch as patents had actually been executed in them in accordance with a construction of the act creating the railroad company, which had been adopted by the Department and was in force at the time the patents were executed, they would be considered as *res adjudicatae*, and would not be disturbed, although the former rule of construction had been changed by the Department and a new and different one adopted, which new rule was in force at the time the cases were heard and decided.

I now hold, and you will adopt the rule for your future guidance, in this case and all like it, that in all cases where patents have actually been executed, in accordance with a construction of law adopted by the Department and in force at the time of the execution of the patents, the patents will not be cancelled or set aside upon any subsequent controversy arising between the different claimants, but the parties will be left to their remedies in court and the cases will be treated as *res adjudicatae*. But in all cases where the controversy arises before patent has been executed, the rule of construction adopted by the Department and in force at the time of the hearing, in all its stages and before any proper officer or officers, will be applied and the cases decided in accordance with it, although it may differ from the rule recognized by the Department at the time the respective proceedings were commenced.

In the case now under consideration, the right of the railroad attached upon the definite location of its road, and before any of the filings of the contesting parties were made.

These filings were made before the withdrawal of the lands, but under the construction now adopted by this Department, the right of the railroad attached at the time of definite location, and not, as formerly held, at the time of withdrawal. No patents have been executed, and under the law, as I understand it, and the rule above stated, the right of the railroad is superior to that of the other parties, and your decision should be reversed.

I therefore reverse the same, and herewith return the papers transmitted with your letter of April 14th, 1873.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 418.

LATIMER ET AL V. BURLINGTON AND MISSOURI RIVER R. R. CO.

At the time the line of the road was definitely located, the tracts now claimed by the applicants were covered with homestead entries, which were subsequently cancelled, and the lands, May 10, 1869, certified to the Company.

Held—That the Commissioner and Secretary having passed upon these claims, and judged that the tracts should go to the road, their decision was upon a subject over which they had jurisdiction, and although it was erroneous, it was not void and could not be attacked collaterally. That the proper way to avoid it was by instituting a suit in equity in favor of the United States, to cancel the certificate of the road.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., May 4th, 1872.

SIR:—I have examined the case of *Maxwell I. Latimer, William H. Malony and John Barker v. Burlington and Missouri River Railroad Company*, on appeal from the decision of the Commissioner of the General Land-Office.

The Railroad Company claims the tract in controversy under its grant of June 2d, 1864 (13 Stat., 96). The appellants claim under homestead entries made subsequent to that date, which entries were cancelled by the decision of the Commissioner above referred to, on the ground that the land covered by them was embraced within such grant to the company. The tracts in controversy are within the six-mile limits of the located and constructed line of the road, and were approved to the Company, May 10th, 1869.

The grant to the road by the act of 1864, was not in the nature of a float, but was a grant, *in presenti*, of six sections per mile, on each side of the *then designated route*, not sold, reserved or otherwise disposed of, or to which a pre-emption claim or right of homestead settlement had not attached, with right of indemnity within twenty miles of its line. (*Johnson v. B. and M. R. R. Co.*, 1 Ops., Ass't Att'y Gen'l, p. 146.) As the homestead entries of the appellants were all made subsequent to the passage of the act, the Commissioner ordered their cancellation.

It is alleged, however, upon appeal, and shown by report of the Commissioner of September 5, 1871, that the tracts claimed were covered by certain other uncanceled homestead entries on the 2d day of June, 1864, which entries were severally cancelled soon after the passage of said act. Subsequently appellants made entry of the tracts now claimed by them, and their entries were duly cancelled by the Commissioner of the General Land-Office, that of Barker, May 1, 1867, and those of Latimer and Malony, each November 10, 1868. From these orders of cancellation no appeal was ever taken by either party. On the 10th of May, 1870, applicants tendered to the Receiver the fees for a final receipt, and offered final proof, but their tender and offer were refused on the ground that their entries had been cancelled. From this refusal the parties appealed. The orders of cancellation, never having been appealed from, are still in force, and the Register rightly rejected their offers, and the Commissioner rightly affirmed his action.

This is a complete answer to the case now under consideration; but inasmuch as other questions which do arise in other pending cases, have been very fully and ably argued in this, I have concluded to consider them now.

It is insisted by counsel for appellants that these tracts were excluded from the grant to the road because they were covered by homestead entries at the time of the passage of the act of June 2, 1864, and that upon the subsequent cancellation of said entries the lands became public lands, and did not inure to the railroad.

In the case of *S. M. Boyd*, (Opinions of Assistant Attorney General, Sec. 1,) I held that a subsisting homestead upon the tract at the time the line of the road was definitely fixed, excluded the land from the grant to the road, and that upon a subsequent termination of the homestead the land reverted to the United States, and did not go to the road.

Prior to that opinion the rule had been otherwise in the Interior Department. From 1866 to 1871, it had been *uniformly held* that an abandonment or termination of such claims operated to invest the railroad with title to the land, and this was the recognized rule at the time the lands now in controversy were certified to the road. (May 10, 1869.)

The question now raised is whether the Department can at this day declare its prior action null and void, and adjust the grant upon principle now held applicable to similar cases. This is insisted upon by the appellants, and is the main question presented by the case under consideration.

The act of June 2d, 1864, granted to the Burlington and Mo. R. R. Company a certain amount of land, and directed that the Secretary of the Interior should cause such land to be "certified and conveyed" to said company as the road progressed. It was the duty of the Commissioner of the General Land-Office, under the direction of the Secretary, to ascertain what lands *were* and what *were not* granted, under this act. After having so ascertained and determined the extent of the grant, it was then his duty to "certify and convey" the lands covered by it to the Company as the road progressed. For the purpose of this examination, and to ascertain the extent of the grant, the Commissioner, under the Secretary, was vested by the act with limited judicial powers. He was a quasi court to give construction to the act, and thereafter a ministerial officer to execute its provisions. In a case of this kind such a jurisdiction must exist and be exercised somewhere, and when Congress directed that the Secretary should cause the lands granted to be certified and conveyed to the Company, it evidently intended to give him power, as a quasi judicial officer, to construe the act and declare what lands should be conveyed. The Commissioner derived through the Secretary a like jurisdiction and power. Thus proceeding, he resorted to the act, and acting within the scope of his judicial powers, construed the grant to include the land in controversy, notwithstanding the fact that uncanceled homestead entries were subsisting upon the same at the date of the passage of the act. This construction was approved by the Secretary, who thereupon certified the tracts to the road.

It should here be particularly noticed that this action of the Department was in conformity to the then established rule applied to the construction of similar grants, and was not in violation of any clear and unambiguous provision of law.

The certification of these tracts to the State is thus shown to have been the result of a deliberate judgment of officers clothed for certain purposes with judicial powers, and acting within the scope of their

authority. As such it binds the Department, according to the well recognized principle of law that the judgment of any tribunal acting judicially and within the scope of its jurisdiction, is conclusive until reversed by a direct proceeding, and cannot be impeached collaterally. *Elliott v. Peirsol*, 1 Pet., 340. *Wilcox v. Jackson*, 13 Do., 511.

I am clearly of the opinion that the construction given to the act by your predecessor was an erroneous one, and I have before intimated that a different rule is now applied; but the remedy in a case of this kind is not to be had by collaterally attacking the prior decision before the same tribunal in which it was made, but by recourse to a court of Equity to cancel and annul patents or certificates so erroneously issued. This is an admitted source of Equity jurisdiction, and affords the government ample relief in a case like the present. *United States v. Stone*, 2 Wall., 525.

Sound policy, as well as legal principles, forbids the adoption of any other rule than the one I recommend. It is of the utmost importance that titles given by the Department should rest on a firm and substantial basis, that they should be accepted and recognized as final adjudications by the Department of the rights on which they are founded, that persons holding these should be secure in their possessions, and that the public generally should have confidence in their stability. This result can never be attained if decisions once made by the Department upon full consideration of all the facts, and within the scope of this authority, are made subject to review by the same tribunal upon a change in its officers.

Such a practice would render insecure every title from the Government, and encourage controversy and litigation.

I recommend, on the grounds and for the reasons set forth, that you affirm the decision of the Commissioner rejecting the claim of the appellants. Very respectfully,

W. H. SMITH, *Assistant Attorney General*.

HON. C. DELANO, *Secretary of Interior*.

Decision by the Secretary, May 9, 1872, adopting this opinion.

III. VERSUS PRE-EMPTIONS.

No. 419.

CIRCULAR.

Public notice to settlers on lands reserved for railroad purposes.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
February 10, 1870.

WHEREAS, by an Act of Congress, approved 27th March, 1854, entitled "An Act for the Relief of Settlers on lands reserved for Railroad purposes," "every settler on lands which have been, or may be, withdrawn from market in consequence of proposed railroads, and who had settled thereon prior to such withdrawal, shall be entitled to pre-emption at the ordinary minimum to the lands settled on and cultivated by them: *Provided*, They shall prove up their right, according to such rules and regulations as may be prescribed by the Secretary of the Interior."

And whereas the first section of the Act approved June 2, 1862 (12th Stat., 413), provides "That all the lands belonging to the United States to which the Indian title has been, or shall be, extinguished, shall be subject to the operation of the pre-emption Act of the fourth of September, eighteen hundred and forty-one, and under the conditions, restrictions, and stipulations therein mentioned: *Provided, however, That when unsurveyed lands are claimed by pre-emption, notice of the specific tracts claimed shall be filed within six months after the survey has been made in the field; and on failure to file such notice, or to pay for the tract claimed within twelve months from the filing of such notice, the parties claiming such lands shall forfeit all right thereto; provided said notices may be filed with the Surveyor General, and to be noted by him on the township plats, until other arrangements have been made by law for that purpose.*"

Therefore, in accordance with the instructions of the Secretary of the Interior, it is ordered that, from and after the publication of this notice for thirty days by the Register and Receiver, all settlers on *unsurveyed lands* within the lateral limits of withdrawals for railroad purposes, and who had settled thereon prior to the withdrawal, will be required, within six months after the survey in the field (or, if surveyed before said publication, within six months after publication), to file their declaratory statements with the Register of the proper local Land-Office, and make proof and payment within twelve months from the filing of such notice. If a Land-Office has not been opened, or if the plat has not been returned to the local office, the settler will be required to file his notice with the Surveyor General within six months after the survey in the field, and, upon the land-office being opened and the plat filed therein, to make his proof and payment at such office within twelve months thereafter.

2d. That where lands were *surveyed* at the date of settlement, and are within the lateral limits of withdrawals for railroad purposes, and such settlement was made prior to withdrawal, the settler will be required to file his declaratory statement, giving therein the date of settlement, within three months from the date of publication hereof by the Register and Receiver, and thereafter make proof and payment as provided by law. In the case of settlers on *surveyed lands*, which may hereafter be included within the limits of withdrawals for railroad purposes, they will be required to file their declaratory statements, in conformity with the provisions of the pre-emption laws of 1841 and 1843, and to make proof and payment as provided by law.

A failure to file and make proof and payment, as specified herein, will forfeit the claim.

These rules will become operative, and be enforced in the several land districts from and after their publication for thirty days by the Register and Receiver, and a copy of the published notice will be forwarded for the information of this office.

Acknowledge date of receipt hereof.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

REGISTERS AND RECEIVERS *U. S. Land Offices,*
and *Surveyors General of the United States.*

No. 420.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov. 7, 1871.

TO REGISTERS AND RECEIVERS OF DISTRICT LAND-OFFICES.

GENTLEMEN:—By the terms of the acts of Congress granting lands to aid in the construction of railroads, there is exempted from the grants lands to which the right of pre-emption had attached at the time when the grant may have become effective, and the Department has ruled that the lands to which such pre-emption claim or right has attached, and such pre-emption subsequently abandoned, does not inure to the railroad grant, but reverts to the United States.

A pre-emption filing of record on your books constitutes, of course, *prima facie* evidence of a pre-emption claim; but it has been represented that in many cases these filings have been made without the preliminary settlement required by the pre-emption laws; that such filings do not in such cases constitute a pre-emption claim or right; that such right can only exist where the party has a legal *status*, which he does not have except by actual settlement prior to filing; and that such illegal filings cannot defeat the railroad claim, where the companies can establish the illegality of the filing, or, in other words, that fraud in the inception of the pre-emption claim renders it absolutely null and void, and that it does not therefore affect the right of the railroad.

I have carefully considered these propositions, and have reached the conclusion that a filing made with allegation of previous settlement, but where it can be clearly shown that such settlement was not in fact made, is a filing in derogation of law, and is fraudulent; consequently is not a pre-emption claim, or right recognized by the law, and does not withdraw the land from the right of the road.

Therefore, where applications may be made to enter any such lands, you will order hearings, giving due notice of the time of hearing to the original pre-emptor, (where the claim is unexpired,) the applicant, and the railroad company, when the company will have the opportunity to prove the fraudulent character of the claim or filing.

You will also, in all cases where the railroad company seeks to select such lands, require them to prove the fraudulent character of all pre-emption claims or filings that may appear by your records to have been in legal existence at the date the right of the road would have otherwise attached.

The proof in all cases must be confined to the action of the pre-emptor *prior* to the filing, as, if the filing or claim was legal in its inception, it withdraws the land from the grant.

There are other points on which a filing may be shown to have had illegal inception, as, for instance, where the party was a foreigner at the time, or had previously enjoyed the right of pre-emption, and you will admit the consideration of these points where they may be alleged against the pre-emption claim.

After a hearing is had in any case, you will transmit the testimony, with your joint opinion thereon, for the action of this Office.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 422.

CIRCULAR.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 17, 1875.

REGISTERS AND RECEIVERS.

GENTLEMEN:—Your attention is called to the act approved March 3, 1875, copy herewith, entitled "An Act for the relief of settlers on lands within railroad limits." (Part II., No. 146.)

You will observe that the right of an applicant to avail himself of the privilege of the additional location provided for by the act is dependent on the following conditions: That his original entry was upon lands which at the date of entry were within the limits of a grant of land made by Congress to aid in the construction of a railroad; that the price of the tract embraced by the entry was by law fixed at two dollars and fifty cents per acre; and that subsequent to the entry the railroad grant embracing it had been forfeited for failure to build the road, and the lands restored to the public domain.

By the words "actual settler" it is understood that purchasers under the pre-emption laws or by commutation under the homestead laws are the sole beneficiaries.

The adjustment provided for by the act assumes that the actual settler has paid \$2.50 per acre for lands for which, by reason of the failure of the special consideration on which it was rated as double minimum, he is equitably entitled to be compensated to the extent of \$1.25 per acre. Instead, however, of a repayment, at that rate per acre, for the whole number of acres embraced in the original entry, he is permitted to take other lands which at their market price will represent in value the excess in the original payment. Hence the additional location should be an equivalent one in all respects. It must be on surveyed, non-mineral, unreserved lands, either offered or unoffered. No settlement, improvement, or filing is required.

The privilege bestowed by the act is personal in character. The rights of property accruing under the act are created by it; hence neither the heirs nor legal representatives of a settler who died previous to the passage of the act are entitled to the additional location. In case, however, of the death of a qualified settler since the approval of the act, his right descends to the heirs, and entry may be made by the executor, administrator, or one of the heirs, and patent will issue in the same manner as in pre-emption cases.

The claimant must make written application to the Register, describing the land he desires to enter, and also the land embraced in his original entry, the number and date of such entry, and the land district in which it was made. This application must be accompanied by his affidavit that he is the identical person who made the original entry, (describing it,) and this must be corroborated by two disinterested witnesses. Whereupon the application will be received, noted in ink on the tract books, and forwarded to this Office with the monthly returns in a separate abstract under said act.

You will be allowed to charge the applicant the regular fees prescribed in the first clause of section 2238, Revised Statutes, to wit: One dollar each to the Register and Receiver, with fifty per centum additional in California, Oregon, Washington, Nevada, Colorado, Idaho,

*For No. 421 see No. 394.

New Mexico, Arizona, Utah, Wyoming and Montana, to be accounted for under section 2245, subject to the conditions of sections 2240 and 2241.

No Receiver's Abstract of Receipts is required. He will duly account for the fees upon his Monthly Fee Statement in the same manner as for Declaratory Statements under the pre-emption laws.

Regular forms for applications, affidavits and Register's Abstracts will be furnished for the use of the District offices.

Respectfully,

S. S. BURDETT, *Commissioner.*

No. 423.

JOHN CASSON.

Casson filed D. S. Denver Dist., Colorado, April 1, 1870, alleging settlement March 1, 1870. Sept. 1, 1870, he asked to amend so as to show settlement Nov. 1, 1866, the date of actual settlement, and prior to withdrawal of land for R. R. purposes. Tp. plat filed Dec. 13, 1869. Unoffered land. Withdrawal, Feb. 18, 1867. Casson claims that he was prevented by the local officers from alleging the true date, they supposing the land to be offered land.

Act of March 3, 1843, required D. S. within three months. Act of March 27, 1854, (10 Stat., 269,) allowed settlement before withdrawal to pre-empt at ordinary minimum, &c., according to rules prescribed by Secretary of Interior. March 22, 1870, Secretary prescribed rules.

Casson complied with the rules of the Secretary, and should have been allowed to amend.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, Sept. 18th, 1871.

SIR:—I have considered the case of John Casson, who makes application to amend his Declaratory Statement on S. W. $\frac{1}{4}$ of S. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$, and S. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, Sec. 34, T. 4 S., R. 65 W., Denver, Col. He filed his declaratory statement April 1, 1870, alleging settlement March 1, 1870, and Sept. 21, 1870, applied to the local office to amend it so as to show settlement Nov. 1, 1866, prior to the withdrawal of the land for railroad purposes. The local officers forwarded his application to the Commissioner with a favorable recommendation. The Commissioner denied his request. Casson has appealed.

The township plat was on file Dec. 13, 1869. When it was filed does not appear, but the land was surveyed in the summer or fall of 1868. It is unoffered land. The withdrawal of the tract for railroad purposes took effect at the local office, Feb. 18, 1867. Casson shows actual settlement Nov. 1, 1866, and claims that he was prevented from alleging this date in his Declaratory Statement by the local officers, who seem to have been at that time under the erroneous impression that the land was offered land, and who refused to allow him to allege a settlement at any period more than thirty days prior to that date. The act of March 3, 1843, required the Declaratory Statement to be filed within three months from the time of settlement, when made on unoffered land.

It is apparent that Casson cannot claim under that law. The act of March 27, 1854, (10 Stat., 269,) provides that settlers upon the public land that had been withdrawn from market for railroad purposes, who had settled thereon prior to such withdrawal, should be entitled to pre-emption at the ordinary minimum to the land settled on and cultivated by them: *Provided*, They should prove up their rights according to

such rules and regulations as might be prescribed by the Secretary of the Interior, and pay for the lands before the day they should be restored to market by the President's proclamation.

On the 22d of March, 1870, the General Land-Office for the first time prescribed such rules and regulations, and required those persons who had settled upon unsurveyed lands, including those within the lateral limits of withdrawals for railroad purposes, settled upon prior to withdrawal and surveyed prior to that date, to file their Declaratory Statements with the Register of the proper land-office within six months from the 1st day of June, 1870, and make proof and payment within twelve months from the date of filing. (No. 350.)

In accordance with these rules, Casson made his filing on the 1st day of April, 1870.

The act of July 14, 1870, (16 Stats., 279,) provided that nothing in the act of March 27, 1854, should be construed to relieve settlers on lands reserved for railroad purposes from the obligation to file the proper notices of their claims as in other cases, and that all claimants of pre-emption rights should thereafter, when no shorter period of time was prescribed by law, make the proper proof and payment for the lands claimed within eighteen months after the date prescribed for their Declaratory notices should have expired. *Provided*, That when said date should have elapsed before the passage of that act, such pre-emptors should have one year after the passage thereof in which to make such proof and payment. By the resolution of March 3, 1871, the time for making proof and payment was extended twelve months.

Under the act of March 27, 1854, as construed by the Commissioner of the General Land-Office as early as April 5, 1854, Casson was not required to file notice of his claim, but could make proof and payment at any time before the land was restored to market by the proclamation of the President.

By the regulations of March 22, 1870, he was required to file notice, and the time for filing was limited to "within six months from June 1, 1870." Casson had on the 1st of April, 1870, filed his Declaratory Statement, and he afterwards, and on the 21st of September, 1870, asked the privilege of amending it so as to correspond with the facts, and show that his settlement was actually made on the 1st of November, 1866, and prior to the withdrawal for railroad purposes; and he then offered to make the required proof to the local officers, and pay for the land. His request on reference to the Commissioner was refused by him.

He had filed in time and before the passage of the act of 1870, and was not affected by that act in any respect, except that the time for making payment, which was before indefinite, was then definitely fixed. When he filed his Declaratory Statement he should have been permitted to have alleged his settlement at the date it actually took place, and the local officers, acting under the mistaken impression that the lands were offered lands, erred in not allowing him to do so. I am of the opinion that he should be permitted to enter the land claimed by him at \$1.25 per acre, the rate at which it was held at the time of his settlement, upon his making the proper proof and payment.

I recommend that the decision of the Commissioner be reversed.

Very respectfully,

W. H. SMITH, *Assistant Attorney General*.

HON. C. DELANO, *Secretary of Interior*.

Concurred in by Acting Secretary Cowen, Sept. 19, 1871.

No. 424.

SCHWERIN v. UNION PACIFIC R. R.

Schwerin settled in November, 1853, and has resided on the land ever since.

Land was withdrawn for railroad, July 30, 1865. Tp. plat filed, May 20, 1863.

Land in California and unoffered. Filed D. S., June 3, 1870. Land pat-

ented to the R. R., May 3, 1870. The 6th Sec., act of 1853, (10 Stat. 246,) makes all lands in California subject to pre-emption act of 1841.

Schwerin did not file within three months from filing of Tp. plat.

Held—That the neglect to file did not forfeit his right, provided no adverse right had attached before he did file.

The railroad did not acquire such adverse right, because Schwerin had acquired a pre-emption right to the land before the line of road was definitely fixed. 12 Stat., 492, Sec. 3. 13 Stat., 504, 358.

Held—Also, that he was protected by the act of March 27, 1854. (10 Stat., 269.)

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, Feb. 9, 1872.

SIR:—I have considered the case of *Hans Schwerin, pre-emption claimant, v. Western Pacific Railroad Company*, involving the right to lots 1 and 2 of N. W. $\frac{1}{4}$ of Sec. 5., Tp. 7 N., R. 3 E., Mount Diablo Meridian, California, and referred to me by you for my opinion. The land is "unoffered" land. The survey was made in the early part of 1863, and the township plat of the survey duly filed on the 20th of May, 1863. These lots were included in the withdrawal for railroad purposes made on the 30th of January, 1865.

Schwerin settled on them on the 1st of November, 1853, and has resided on them from that date to the time of hearing, August 16, 1870, and is supposed to be in possession now. He has made lasting and valuable improvements, and his good faith as a pre-emptor is beyond question. He filed his declaratory statement on the 3d of June, 1870, alleging settlement on the 1st of November, 1853. The land was patented to the railroad on the 3d day of May, 1870.

The local officers decided in favor of Schwerin; the Commissioner in favor of the railroad.

By the 6th section of the act of March 3, 1853 (10 Stat., 246), all the public lands, whether surveyed or unsurveyed, in the State of California, are made subject to the pre-emption laws of the 4th of September, 1841, "with all the exceptions, conditions and limitations therein," except as otherwise provided in that act. One of the provisions of that act is, "that when unsurveyed lands are claimed by pre-emption, the usual notice of such claim shall be filed within three months after the return of the plats of surveys to the land-offices, and proof and payment shall be made prior to the day appointed by the President's proclamation, for the commencement of the sale including said lands. * * *

Provided, That nothing in this act shall be construed to authorize any settlement to be made on any public lands not surveyed, unless the same be made within one year from the passage of this act."

Schwerin settled within the year. The land has not been proclaimed by the President.

He is now ready to prove up and make payment. He is in no default, except he did not file the "usual notice" of his claim within three months after the township plats were filed in the local offices.

Does that neglect defeat his claim?

The act requires him to file within three months. It does not de-

clare a forfeiture if he fails to do it. It does not state what the consequences of such failure shall be. In that respect it is unlike the acts of Sept. 4, 1851, 5th Stat., 457, Sec. 15, and the act of March 3, 1843, 5th Stat., 620, Sec. 5.

In my opinion the neglect to file his declaratory statement does not defeat his claim, unless an adverse right has attached to the land before such statement is filed.

This opinion is founded upon the construction put by the Supreme Court of the United States upon the fifth section of the act of 1843, in the case of *Johnson v. Towsley*, decided at the December term, 1871, and not yet reported.

Said fifth section provided that a pre-emptor of "unoffered" land should file his declaratory statement within three months from the time of settlement, "otherwise his claim to be forfeited and the tract awarded to the next settler in the order of time, on the same tract of land, who shall have given such notice and otherwise complied with the conditions of the law."

The court said: "It is agreed that if the pre-emption claim of Towsley was not governed by the fourth section of the act of 1843, it certainly was by the fifth section of that act, and as he did not file his declaration of intention within three months from the time of settlement, his claim was forfeited and gave him no right. The record shows undoubtedly that his settlement commenced about eight months before he filed his declaration, and it must be conceded that the land was of that class which had not been proclaimed for sale, and his case must be governed by the provision of that section. It declares that where the party fails to make the declaration within the three months his claim is to be forfeited and the tract awarded to the next settler in order of time on the same tract, who shall have given such notice and otherwise complied with the conditions of the law. * * *

"If no other party has made a settlement, or has given notice of such intention, then no one has been injured by the delay beyond three months; and if at any time after the three months, while the party is still in possession, he makes his declaration, and this is done before any one else has initiated a right of pre-emption by settlement or declaration, we can see no purpose in forbidding him to make his declaration, or in making it void when made. And we think that Congress intended to provide for the protection of the first settler by giving him three months to make his declaration, and for all other settlers by saying, if this is not done within three months any one else, who has settled on it within that time, or at any time before the first settler makes his declaration, shall have the better right. As Towsley's settlement and possession were continuous, and as his declaration was made before Johnson or any one else asserted claim to the land or made settlement, we think his right was not barred by that section under a sound construction of its meaning."

Adopting this decision as good law, and applying the principle therein announced to the sixth section of the act of 1853, and it is clear that Schwerin did not lose his right, by his failure to file within the three months, unless some adverse right had attached before he made his filing on the 3d of June, 1870.

It is claimed that the railroad did acquire such adverse right. I am of opinion that it did not. The Western Pacific Railroad Company is the assignee of the Central Pacific Railroad Company of California.

The assignment was ratified by act of Congress of March 3, 1865, and the assignee was given all the rights, privileges and benefits of the assignor. (13 Stat., 504.)

The assignor was authorized by the tenth section of the act of July 1, 1862, (12 Stat., 494,) to construct a railroad and telegraph line from the Pacific coast to the eastern boundary of California, "upon the same terms and conditions in all respects" as were given to the Union Pacific Railroad Company. This last named Company was given "five alternate sections per mile on each side of said road, not sold, reserved or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of said road is definitely fixed." (12 Stat., 492, Sec. 3.)

The fourth section of the act of July 2, 1864, (13 Stat., 358,) amended the third section of the act of July 1, 1862, and enlarged the grant to ten alternate sections on each side of the road, and provided that "any lands granted by this act or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp land or other lawful claim." The lands in controversy are within the enlarged grant made by the act of 1864. The line of the Western Pacific Railroad was definitely located on the 8th of May, 1868. At the time this was done the pre-emption right of Schwerin, in the lands in controversy, had attached. He had made his settlement, and inhabited and improved the land, and was then in possession of it. Such settlement, improvement, inhabitancy and continued possession for more than fifteen years, is certainly the initiation of a pre-emption right.

The 3d section of the act of 1862, and the 4th section of the act of 1864, taken together and construed as one act, (as they are) clearly show that Congress intended to exclude from the grant all lands to which a pre-emption right had attached at the time the line of the road was definitely fixed. Such a right having attached, in favor of Schwerin, I am of opinion that the land in controversy did not pass under the grant to the road, and that no such adverse right is shown as defeats his claim.

There is another view that may be taken of this case, and that leads to the same result. The act of March 27, 1854, (10 Stat., 269,) provided that every settler on public lands which had been or should thereafter be withdrawn from market in consequence of proposed railroads, and who had settled prior to such withdrawal, should be allowed to pre-empt the lands he had settled on and cultivated, at one dollar and a quarter per acre, provided he should prove up his rights according to such rules and regulations as should be prescribed by the Secretary of the Interior, and pay for the lands before the day fixed by the President's proclamation for their restoration to market.

As early as April 5, 1854, an official construction was given to this act that it did not require the filing of any declaratory statement, and that proof and payment could be made at any time before the lands were restored to market by the President's proclamation.

The first rules and regulations ever issued under it, were issued on the 22d of March, 1870. Those rules required that persons who had settled prior to withdrawal on unsurveyed lands, withdrawn for railroads and surveyed prior to March 22, 1870, should file their declaratory statements with the Register within six months from the 1st day of June, 1870.

Now, on the 8th day of May, 1868, when the line of the railroad was

definitely fixed, and when the right of the railroad would first attach to the lands in controversy, if it attached at all, Schwerin was within all the provisions of the act of March 27, 1854. He had settled, in 1853, on unsurveyed lands. They were surveyed in 1863, and withdrawn for railroad purposes in 1865.

He had filed no declaration, because the proper Department had ruled that no filing was necessary. As soon as a filing was required he promptly complied. The regulation provided that it might be done at any time within six months after the 1st of June, 1870. He filed on the 3d of June, 1870. He was in time. He alleges that he desired to file long before he did, but the local officers informed him that it was not necessary, and would not be allowed. There is no proof of this allegation, but I have no doubt of its truth. The local officers were of opinion that no filing was necessary, and that was the rule of their office.

It is true that the act of July 14, 1870, (16 Stat., 279,) provided that nothing in the act of March 27, 1854, should be construed to relieve settlers on lands reserved for railroad purposes from obligation to file proper notices of their claims, as in other cases. That act, however, was prospective in its operation, and did not apply to this case. Schwerin had already filed at the time the act was passed. The fact that Congress passed it, is evidence that it supposed such notice was not required by the law as it then stood.

I am of opinion that Schwerin's rights are protected by the act of 1854, and that his claim is superior to that of the railroad company. The patent should have been issued to him, but it was inadvertently issued to the railroad company.

In like cases the Land-Office has sometimes issued a second patent. It did in the case of *Stark v. Starr*, 6 Wallace 402. The second patent reserved the rights of the grantee of the first.

The Supreme Court in the case of *Johnson v. Towsley*, speaks of this as a common practice in the Land-Office. I think it may be done in a case like the present, and I advise that the decision of the Commissioner be reversed, and that a patent issue to Schwerin reciting the issuing of the patent to the railroad, and reserving all rights of the railroad.

Very respectfully,

W. H. SMITH, *Assistant Attorney General*.

HON. C. DELANO, *Secretary of Interior*.

Approved by the Secretary, under date of March 28th, 1872.

No. 425.

BENSON v. WESTERN PACIFIC RAILROAD COMPANY.

A public officer may, during the term of his office, actually reside at the capital or other place required by law for him to reside, without losing his legal residence.

Where it can be shown that such public officer in good faith intended to appropriate certain premises under the pre-emption law, and that after residing thereon for several years he left for temporary purposes only, retaining actual possession of the land during such absence, he cannot be said to have abandoned either the premises or his claim under the pre-emption laws.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Oct. 25, 1873.

SIR:—I have considered the application of Sanford G. Benson to file as a pre-emptor upon the northwest quarter, and of William W. Benson

to file as a pre-emptor upon the southwest quarter of Section 23, T. 1 N., R. 1 W., Mount Diablo Meridian, Cal., on appeal from your adverse decision of August 9, 1873.

Sanford G. and William W. Benson offered their respective filings, properly made out, to the local officers on the 13th November, 1872. Sanford G. alleged settlement in October, 1868, and William W. alleged actual settlement in the same month and year, but claimed legal settlement only from the 27th of June, 1871, which was the day he arrived at the age of twenty-one years.

These parties are respectively entitled to the lands on which they made their application to file as pre-emptors, unless the same have been granted to, and are the property of, the Western Pacific Railroad Company.

At the time these settlements were made the lands were unsurveyed, and no township plat of survey was filed until October 17, 1872. These lands, among others, were withdrawn for the benefit of the Western Pacific Railroad on the 30th of January, 1865, and said railroad definitely located its line along them in the month of April, 1868.

They clearly belong to the railroad, unless at the time its line was definitely located there were upon said tracts valid and subsisting pre-emption claims; and the real question in this case is, whether or not there were any such claims existing at that date.

It appears from the evidence and exhibits on file that one Mark Shepherd settled upon the southwest quarter of said section in the year 1860; that he then moved with his family upon said land; that he built a dwelling-house, and made other lasting and substantial improvements thereon, and resided continuously with his family thereon until some time in the year 1864. In that year he was elected judge of the county court for the term of four years, and was required by law to reside at the county seat of the county. He removed with his family to the county seat, and there remained until the fall of 1868, when he sold all his interest in the premises to the father of the applicant, Sanford G. Benson, who paid a large sum of money in gold coin for the improvements made by the said Shepherd.

It also appears from the evidence in the case that the said Mark Shepherd left said quarter section with the intention of returning with his family to the same, and of remaining away temporarily and only so long as would be required to fill the term for which he had been elected as county judge; that during the time of his absence and residence at the county seat he retained the actual possession of said tract, kept his stock upon the same during all of that period, and for a portion of the time had a tenant on the same.

It further appears as to the northwest quarter, that one C. M. Shepherd, in the year 1860, entered upon said quarter and resided thereon continuously from that time until the fall of 1868, when he transferred all his interest in the same to the father of the applicant, William W. Benson. And that during the period of his residence thereon, he, as also his brother, Sanford G. Benson, intended, as soon as said lands should become surveyed, to follow up the same as a pre-emptor, and appropriate them under the pre-emption laws.

If upon this state of fact Mark Shepherd and C. M. Shepherd had, in the month of April, 1868, when the railroad claim was definitely located, valid pre-emption claims upon said premises, then by the terms of the act the same are excluded from the grant to the railroad company.

Did either of said parties have such a claim? I am of opinion that each of them had. Mark, who was elected judge, was required by law to reside at the county seat. That was, for the time being, the place of his actual residence, but it was not the place of his legal residence. Under the law, the premises which he had occupied and left with the intention of returning thereto was the place of his legal residence. A public officer may during the term of his office actually reside at the capital, or other place required by law for him to reside, without losing his legal residence. I think the facts in the case of Mark show that he in good faith intended to appropriate the premises under the pre-emption law, and that after actually residing upon them for a period of four years, he left them with the intention of returning as soon as his term of office expired, and that, having retained actual possession of them during all that period, it cannot be fairly said that he has abandoned either the premises or his claim under the pre-emption laws.

It is true, the pre-emption act requires that the person who seeks to appropriate land under it shall inhabit and cultivate it. But I do not think that this requires that the party shall remain on the premises in the actual inhabitancy of the same from the time of his first settlement until he makes his final proof and payment; but he must remain a sufficient length of time an actual resident on the premises to show that he is acting in good faith in his intent to appropriate the land. And if, after such time has expired, he leaves the premises for temporary purposes only, as in this case for the purpose of filling the office of county judge, I do not think that he thereby loses his right to the land.

The word "inhabit" is defined by Webster as follows: "To occupy as a place of settled residence." I think that Mark Shepherd may properly be regarded as occupying the premises as "a place of settled residence," even while he was actually absent therefrom, filling the office of county judge. I have no doubt of his entire good faith, and I think that the pre-emption law should be construed liberally, and so as to protect persons who act *bona fide* in their claim to the land.

As to the other tract occupied by O. M. Shepherd, it would seem that there could be no controversy. He was in actual possession of the land, and had resided thereon for many years, at the time the line of the road was definitely located, in April, 1868. He had done everything that the law required him to do to show that he was, in good faith, seeking to appropriate the land under the pre-emption law. He had not filed a declaratory statement, for the reason that the land was unsurveyed, and it was impossible for him so to do.

In my opinion the pre-emption right had attached and was subsisting on each of these tracts at the time the line of the road was definitely located, and therefore they are excluded from the grant, and should not and do not go to the road under the law. And as there is no other claim to the land adverse to the applicants, (the father having purchased the same for the benefit of his sons,) except that of the railroad, which I find to be invalid, I am of opinion that the applicants are entitled to file as pre-emptors, and that the local officers correctly permitted them so to do, and that your decision in refusing such filing was erroneous and should be reversed.

I therefore reverse the same, and return herewith the papers transmitted with your letter of the 15th instant.

Very respectfully, your obedient servant,

B. R. COWEN, *Acting Secretary.*

No. 426.

HERMAN v. WEST WISCONSIN RAILROAD COMPANY.

A settler on a tract of public land within the provisions of the act of March 27, 1854, (10th Stat., 269,) entered the same eleven years subsequent to filing his declaratory statement, but prior to the prescribing of the rules and regulations by the Secretary of the Interior under said act.

Held—That he was not in default, and that his entry was valid.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Feb 18, 1874.

SIR:—I have considered the case of *Jacob Herman v. The West Wisconsin Railroad Company*, involving title to lots 7 and 8, and S. W. $\frac{1}{4}$, Sec. 11, Tp. 26, R. 13 W., Falls St. Croix, Wisconsin, (offered land,) on appeal from your decision of March 20, 1873.

Herman settled on the land in contest, December 25, 1855, and filed his declaratory statement January 3, 1856. He has remained in possession since that date, and made lasting and valuable improvements, and his good faith is undoubted.

The land was withdrawn for the La Crosse and Milwaukee railroad (now West Wisconsin) June 3, 1856. The line of the railroad was definitely located, July 13, 1857.

The land was approved to the road December 18, 1863, long before the construction of the railroad along said section 11. Herman made cash entry June 6, 1867.

You held his entry for cancellation on the ground that he did not make proof and payment within one year from filing his declaratory statement, and therefore that his claim was forfeited before the line of the road was definitely located, and the railroad was entitled to the land under its grant. The grant to the La Crosse and Milwaukee railroad excepted from its operation all odd numbered sections to which a pre-emption right had attached at the time of definite location. (11 Stat., 20, Sec. 1.)

Was there such a right subsisting on this land on the 13th of July, 1857, the time of definite location? I think there was. Herman had settled as a pre-emptor prior to withdrawal, and was, therefore, within the provisions of the act of March 27, 1854, (10 Stat., 269,) which act authorized persons who had settled on lands which should thereafter be withdrawn to pre-empt the same at the ordinary minimum; provided they should "prove up their rights according to such rules and regulations as may be prescribed by the Secretary of the Interior, and pay for the same before the day that may be fixed by the President's proclamation for the restoration of said lands to market."

No such rules and regulations were prescribed until March 22, 1870. Herman was not, therefore, in default, and his pre-emption was a valid and subsisting one at the time the line was definitely located, and the land was excluded from the grant. (See my decision in the case of *John Casson*, September 18, 1871, and *Hans Schwerin v. Western Pacific Railroad*, February 9, 1872.

Herman made cash entry before he was in default, and is superior in right to the railroad.

I reverse your decision, and award to him the land in contest.

Very respectfully,

C. DELANO, *Secretary*.

HON. W. DRUMMOND, *Commissioner General Land-Office*.

No. 427.

SLOAN v. IOWA FALLS AND SIOUX CITY R. R. CO.

A tract included in a cash pre-emption entry, cancelled because it embraced more than 160 acres and not included in a subsequent entry, does not enure to a railroad which was definitely located after the first entry was made, and prior to the cancellation thereof.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., October 30, 1874.

SIR:—I have examined the case of *James B. Sloan v. The Iowa Falls and Sioux City Railroad Company*, involving title to lot 1, sec. 23, T. 89, R. 48, Sioux City, Iowa, on appeal from your decision of Nov. 7, 1873.

This tract is within the six-mile limits of the road, which was definitely located July 5, 1856. Sloan entered it as a homestead Feb. 17, 1872, and afterwards commuted to cash entry. He claims that the land is excepted from the grant by reason of a pre-emption cash entry made by one Honore Ayott, June 13, 1856. The record shows that Ayott filed his declaratory statement for lot 1 and certain other tracts Feb. 22, 1856, and commuted same to cash pre-emption entry June 13, 1856.

His original filing and cash entry covered more than 160 acres, and for that reason his entry was cancelled June 3, 1857, and he was allowed to make a new one, not exceeding 160 acres. In the new entry lot 1 was excluded, and the purchase money therefor returned to him.

This case resolves itself into this single question: Was there, on the 5th of July, 1856, a valid pre-emption claim to said lot, capable of being perfected into a complete and perfect right? I think there was. Ayott had a good claim to 160 acres. He had the right to elect to include lot 1 as a part of that claimed. If he had done so his right would have been complete. That he did not do it is immaterial. He might have done it. I reverse your decision, and herewith return the papers transmitted with your letter of July 22d last.

Very respectfully,

C. DELANO, *Secretary.*

To the Commissioner of the General Land-Office.

No. 428.

WESTERN PACIFIC R. R. v. SPRATT.

Held—That a pre-emption claim which had been abandoned by the pre-emptor before the line of the railroad was definitely located, did not prevent the land from going to the railroad.

"A pre-emption claim may be defined to be a right or interest subsisting under the pre-emption law, in some person, to a tract of public land, which, by a further full compliance with the law, may be ripened into a perfect title."

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, D. C., July 17, 1872.

SIR:—I have considered the case of the *Western Pacific Railroad Co. v. John Spratt*, involving the right to the S. E. $\frac{1}{4}$ of Section 3, T. 9 N., R. 2 E., M. D. M., Marysville, Cal., appealed by the Company from your adverse decision.

Township plat was filed July 7, 1859. Spratt, August 26, 1863, filed D. S. on the land, alleging settlement January 1, 1858. In the spring of 1864 he abandoned his claim, and never having returned to the tract, died in 1866, leaving no heirs, so far as is shown in the case.

The land was included in the withdrawal of September 13, 1862, for the Central Pacific R. R.

The Central Pacific assigned to the Western Pacific R. R. Co., and the assignment was ratified by act of March 3, 1865. (13 Stat., 504.)

By the grant to the former inuring to the latter Company (12 Stat. 489), "lands to which * * * a pre-emption claim have attached at the date the line of said road is definitely fixed," are expressly exempted from its operation. The line of the road was definitely fixed past the land in question, May 8, 1868.

If therefore the tract was covered by a pre-emption claim at that date, it was reserved from the grant, and on the subsequent failure of the claim reverted to the government. If it was not so covered, it passed to the railroad.

A pre-emption claim may be defined to be a right or interest subsisting, under the pre-emption law, in some person, to a tract of public land, which, by a further full compliance with the law, may be ripened into a perfect title.

It is essential to a *bona fide* pre-emption claim that it subsist in some person, and that it be capable of being perfected.

Both of these elements are wanting in the claim of Spratt.

His right, granting that he once had a right, (which is doubtful, for there was no law, at the time he made his settlement, allowing pre-emption on unsurveyed land in California,) had lapsed by his failure to make proof and payment at the time required by law, and at the time the right of the road attached he was dead, leaving, as far as appears, no heirs. He had as early as 1864 abandoned the premises.

I do not think it is material that his filing had not been formally cancelled by the General Land-Office.

I think that there was no pre-emption claim attached to the land, within the meaning of the act, at the date of definite location of the road, and that the tract belongs to the road under the grant. I advise a reversal of the decision of the Commissioner.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, July 31, 1872.

No. 429.

ANSON MILLS.

Under the third section of the act of July 1, 1862, a party applied to pre-empt land within the U. P. R. R. limits.

Rejected, as before the tracts applied for could be purchased under the act of 1841 they must be formally restored to market.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Sept. 15, 1873.

REGISTER AND RECEIVER, *North Platte, Nebraska.*

GENTLEMEN:—I have examined the application of Anson Mills forwarded by you March 24, 1873, to file his declaratory statement on the

S. W. $\frac{1}{2}$, Sec. 33, 14 N., 30 W., an odd section within the limits of the grant of 1862 to the Union Pacific Railroad Company.

Mr. Mills offered to file March 14, 1873, alleging settlement December 21, 1872; land unoffered. His declaratory statement is in the usual form, except an interlineation which makes his claim read as follows: "And I do hereby declare my intention to claim the said tract of land, except that portion not disposed of by the Union Pacific Railroad Company July 16, 1869, as a pre-emption right under the provisions of said act of 4th September, 1841."

He bases his alleged right to purchase the land on the provision of the third section of the act of July 1, 1862, that "all such lands so granted by this section which shall not be sold or disposed of by said company within three years after the entire road shall have been completed, shall be subject to settlement and pre-emption like other lands, at a price not exceeding one dollar and twenty-five cents per acre, to be paid to said company."

He files documents which he relies on to show that the road has been completed for more than three years, and thereupon rests his application to file.

This Office has heretofore held that said proviso of the act of 1862 is a condition running with the grant, and imposes on the company the obligation after three years to throw its lands open to settlement and pre-emption at a maximum price. A late decision of the United States Supreme Court seems, however, to indicate a different construction.

I do not find it necessary, however, to decide the question in this case.

The declaratory statement of Mr. Mills is completely annulled in its effects by the interlineation which he has seen fit to introduce in the regular form of printed blank. As now stated, it calls for land alleged to be in a particular condition, "except that portion" not in such condition.

Further, I do not find any allegation that the land was not disposed of by the company prior to the expiration of three years from the alleged date of the completion of the road.

I therefore decline to enter upon the consideration of the questions presented by the law referred to, or even to the ascertainment of the alleged fact of completion.

It is sufficient to say that the land is withdrawn from market, is considered as within the grant, and if it should ever again fall under the pre-emption laws, full notice of that fact and formal restoration will be necessary before applications for purchase can be properly received.

You will so advise Mr. Mills, and allow him sixty days for appeal.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

Affirmed March 24, 1874, by Acting Secretary B. R. Cowen, for the reasons above set forth.

No. 430.

ABBOTT v. CENTRAL PACIFIC RAILROAD COMPANY.

The application of a settler to file on railroad lands when settlement was subsequent to withdrawal should be rejected in the absence of evidence showing the pendency of a legal claim at the date of withdrawal. But when an affidavit is filed alleging the existence of such adverse claim, an investigation should be had to ascertain the facts, as the existence of such conflicting claim at the date of definite location would exclude the tract from the grant, notwithstanding the prior settler had made no filing on the land.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., March 31, 1873.

SIR:—I have examined the case of *Seneca J. Abbott v. The Central Pacific Railroad Company*, involving title to S. $\frac{1}{2}$, N. E. $\frac{1}{4}$, S. $\frac{1}{2}$, N. W. $\frac{1}{4}$, Sec. 25, Tp. 11 N., R 3 E., Marysville, California, on appeal from your decision of July 23, 1872.

The tract in controversy is within the limits of the grants to the Western (now Central) Pacific Railroad Company and the California and Oregon Railroad Company, and was included in the withdrawal of September 13, 1862, and January, 1865, for the former, and that of February 25, 1867, for the latter road. The township plat was filed in the local office in 1870.

On the 20th day of December, 1871, Abbott appeared at the local office and offered to file on the land as a pre-emptor, alleging settlement thereon in July, 1868. Accompanying the application was his affidavit, in which he alleged that he was a qualified pre-emptor; that he settled on the tract in controversy in July, 1868; that he had since that date continuously resided thereon with his family; that he had cultivated and improved the tract; that at the time of his settlement he purchased the improvements of one James Smith; that said Smith settled on the tract in 1858; that he (Smith) was a qualified pre-emptor; that said Smith continuously resided on the tract, cultivating and improving it, from the date of his settlement in 1858 to the time of the sale of his improvements to him (Abbott) in July, 1868; and that to the best of his (Abbott's) information, knowledge, and belief he, (Smith,) in good faith, up to the time of such sale, claimed the tracts under the pre-emption laws of the United States.

The local officers rejected the application of Abbott, on the ground that the tract was included in the withdrawal limits of the California and Oregon Railroad.

On appeal, you reject the application of Abbott in favor of the Central Pacific Company, on the grounds stated in your letter of July 23, 1872. Abbott has appealed to the Department.

I agree with you that the application of Abbott to file as a pre-emptor should, so long as the land retains its present status, be denied, inasmuch as he does not allege or claim settlement prior to the withdrawal; but I am clearly of the opinion that the tract should not be awarded to the company without an examination into the matters of fact alleged in the affidavit of Abbott. If the allegations therein made are true, it is clear that at the date of definite location of the line of the road there was in existence a valid pre-emption claim to the tract in controversy, which would of course take it from the grant to the company.

Under these circumstances, and in view of the fact that Abbott

appears to have a valuable interest in the tract in controversy, which he can in no other way assert or defend, I am of opinion that an investigation should be ordered before the local officers of the facts alleged, and that he should be given an opportunity to show that at the date of the definite location of the line of the road the tract in controversy was covered by a valid pre-emption claim.

I modify your decision in the manner above specified, and return herewith the papers transmitted with your letter of February 6, 1873.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 431.

SCOTT v. WESTERN PACIFIC R. R. CO.

Unsurveyed lands in California were not subject to pre-emption settlement after the expiration of the act of March 1, 1854, (10 Stats., 268,) and prior to the act of May 30, 1862. (12 Stats., 409.)

Pre-emption filings cannot be received by the local land-office prior to the filing of the township plat in their office, and such illegal filings, in the face of an adverse claim, cannot be perfected by proof and payment.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 11, 1873.

SIR:—I have considered the case of *Martin C. Scott v. The Western Pacific R. R. Co.*, involving the right to W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, Section 33, T. 5 N., R. 7 E., Stockton district, California, appealed by the latter from your adverse decision of the 18th November last.

The land is unoffered, township plat filed May 25, 1859. The tract was duly selected by the R. R. Co. Sept. 23, 1869, and patented to them under their grant April 9, 1870.

Scott, March 10, 1859, filed D. S. on this and other land, alleging settlement Dec. 10, 1858. Dec. 9, 1871, at his request, the R. R. Co. was cited to appear on Jan. 2, 1872, to show cause why he should not be allowed to complete his claim. At the latter date his proofs were received, and he was allowed to make payment for the land with A. C. Scrip.

Under date of Nov. 18, 1872, you notified the R. R. Co., through its attorney, Henry Beard, Esq., of Scott's claim to the land, and requested him (Beard) to cause relinquishment by the Company of the land claimed, and informed him that "in case of failure or refusal to file such relinquishment here (in your office) within sixty days from this date, steps will be taken to issue a second patent for said tract, reciting the erroneous patenting of the tract to your Company."

Mr. Beard regarded this as an interlocutory order, and not a final decision in the case, neglected to take appeal therefrom, although intending to contest Scott's right to the land. You accordingly, after the expiration of the sixty days, issued patent to Scott, and forwarded it to the land officers for delivery.

Mr. Beard having appealed from this action, the local officers were directed by your telegram of February 12 last, to hold and not deliver the patent, and it now remains in their hands subject to your orders.

Two insuperable objections appear to Scott's claim:

1st. His settlement was made Dec. 10, 1858, upon unsurveyed land, after the expiration of the act of March 1, 1854, (10 Stat., 268,) and be-

fore the passage of the act of May 30, 1862, (12 Stat., 409,) a period within which such settlements were inadmissible and without authority of law.

2d. At the date of his alleged filing, the township plat had not been filed, and he was therefore without authority to make and the Register without authority to receive his filing.

His claim having no legal inception, the local officers erred in receiving his proof and payments until these defects were healed.

This might have perhaps been done in the absence of a valid adverse claim. But the right of the road having intervened and been carried to patent, it was impossible, and his case must wholly fail.

I reverse your decision, and direct the recall and cancellation of the patent to Scott. The papers in the case; transmitted with your letter of April 8 last, are herewith returned.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

IV. VERSUS MISCELLANEOUS ADVERSE CLAIMS.

No. 432.

SARGENTS, TREADWAYS ET AL. V. WESTERN PACIFIC R. R. CO.

The decisions of the heads of departments should not be disturbed except in extraordinary cases. To ascertain the meaning of the word "reserved," resort may be had to the several Congressional acts in which the same term occurs.

Land embraced within an unadjusted private grant is "reserved" within the meaning of that word.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., March 16, 1871.

SIR:—I return the papers in the case of the *Sargents, Treadways et al. v. The Western Pacific Railroad Company*, which accompanied the letter from your office of the 2d of December last.

The attorneys of the Company applied for a reconsideration of the decision of my immediate predecessor in this case, on the ground of an alleged error of law.

I submitted to the Attorney General for his opinion, whether in view of the decisions of the Supreme Court, and of his predecessors in previous similar cases, I was authorized to grant the application, and also whether there was any error of law in his decision. The Attorney General, on the 7th instant, rendered an opinion answering both questions in the negative.

I enclose said opinion (and when you have taken a copy you will return it), and direct that the decision in favor of the Sargents, Treadways, et al., be carried into effect.

Very respectfully, your obedient servant,

W. T. OTTO, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner of General Land-Office.*

DEPARTMENT OF JUSTICE,
March 7, 1871.

HON. C. DELANO, *Secretary of the Interior.*

SIR:—On the 7th of July last, Mr. Cox, then Secretary of the Interior, decided the case of *R. C. Sargent and others, and S. V. Treadway and others v. The Western Pacific Railroad Company*, in which an appeal to him had been taken from the Commissioner of the General Land-Office. He affirmed the decision of the Commissioner in favor of the Sargents and Treadways, and recognized those persons as the lawful purchasers of certain lands in California under the act of July 23, 1866. (14 U. S. Stat., 220.)

The Railroad Company has asked you to reconsider the case, and to reverse this decision of your predecessor.

The application rests solely upon the ground that his decision was erroneous in law. Your letter of the 6th of January last requests my advice upon the question, whether you are authorized to reconsider the case, and also upon the question whether there is any error of law in Mr. Cox's decision.

It has not yet been settled how the decisions of the head of a department have the conclusive force of the judgments of courts. But the better opinion certainly is that such decisions should not be disturbed except in extraordinary cases. *The United States v. The Bank of the Metropolis*, 15 Peters' R. 401; Opinion of Mr. Wirt, 2 Opinions, 9; of Mr. Taney, 2 Opinions, 464; of Mr. Nelson, 4 Opins., 341; of Mr. Toucey, 5 Opins., 29; of Mr. Johnson, 5 Opins., 123-4; of Mr. Black, 9 Opins., 101, 301-2, 387; of Mr. Stanbery, 12 Opins., 358; of Mr. Hoar (not yet published), dated April 26, 1867, in relation to the case of Admiral Goldsborough, and another unpublished opinion of May 5, 1870, in relation to the claim of George Chorpening. Against this current of authority is to be set the opinion of Attorney General Bates, 10 Opins., pp. 61-62. His dissent is, however, somewhat weakened in force by his later opinion in the case of Anson Dart, 10 Opins., 255, in which he seems substantially to concur with the other opinions which I have cited.

In the case in hand, the parties in interest were heard before Secretary Cox. His decision was the result of careful and thorough consideration. It is not alleged that any material fact in the case can now be laid before you which was not before him. There was no haste, no surprise, no inadvertence. I am, therefore, of opinion that his decision should be considered as the final adjudication of your Department.

But you also ask whether his decision was correct.

The claim of the Railroad Company rests upon the donation in the act of July 1, 1862, sec. 3 (12 U. S. Stat., 492), "of five alternate sections per mile on each side of said railroad, on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached, at the time the line of said road is definitely fixed."

This section is amended by the act of July 2, 1864, sec. 4. (13 U. S. Stat., 358.) The lands in question are a part of what is known as the "Moquelemas" grant. This grant was confirmed by a decree of the District Court in California, in April, 1857. In March, 1860, the Supreme Court on appeal reversed this decision and remanded the case for further evidence. The District Court, upon a new hearing in June

1862, rejected the claim, and this decision was affirmed by the Supreme Court on appeal, February 13, 1865.

The Sargents and Treadways contend that the pendency of this claim brings the land in question within the meaning of the term "reserved," in section 3 of the act of July 1, 1862, and this excepts it from the donation to the company. On the other hand the company contends that the pendency of such a claim, ultimately ascertained by the decision of the Supreme Court to have been invalid, does not bring the land within the meaning of that term.

To ascertain the meaning of Congress in the use of this word "reserved," we may resort to other legislation in which the same term occurs. An act was passed March 3, 1851, to ascertain and settle the private land claims in the State of California, in which the mode of proceeding to settle such claims is prescribed in full. (9 U. S. Stat., 631.) It was under this act that the above proceedings in relation to the Moquelemas grant were had. In an act to extend pre-emption rights to certain lands therein mentioned, passed March 3, 1853, (10 U. S. Stat., 244,) this language is found: "That any settler who has settled, or may hereafter settle, on lands heretofore reserved on account of claims under French, Spanish or other grants, which have been or shall be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all the rights of pre-emption granted by this act, and the act of fourth of September, 1841, entitled, 'An act to appropriate the proceeds of the public lands and to grant pre-emption rights,' after the lands shall have been released from reservation, in the same manner as if no reservation existed.

In this act Congress treats lands in the condition of the "Moquelemas" grant as lands reserved. Here, then, we have a legislative definition of this word as used in the act of July 1, 1862. The land covered by the "Moquelemas" grant was held back from survey on account of a claim under a Spanish grant which has been declared by the Supreme Court of the United States to be invalid, and such land in the act of March 3, 1853, is described as reserved. A word should be taken in the same sense when used in different statutes upon the same subject, unless there is something in the context to denote a different sense.

The case of *Walcott v. Des Moines Company*, (5 Wall., 681,) cited by Secretary Cox, seems to me to be an authority in support of his decision.

The substance of that case is this, that in a grant of lands to certain railroads, an exception of lands heretofore reserved to the United States by an act of Congress, or in any other manner by competent authority, for the purpose of aiding in any objects of internal improvement or for any purpose whatsoever, was applicable to lands which had been supposed to pass under a previous grant, but which were afterwards determined by adjudication not to have so passed.

I am unable to find a distinction between the principle of that decision of the Supreme Court and the principle upon which Secretary Cox has proceeded in his decision. If, therefore, I were called upon to decide the question as an original one, I should come to the conclusion which he has reached.

Very respectfully, your obedient servant,

A. T. AKERMAN, *Attorney General*.

No. 433.

CENTRAL PACIFIC R. R. CO. v. STATE OF NEVADA.

Upon consideration of the objections urged by the above Company to the final approval of selections made by the State of Nevada of certain described tracts of land on odd sections within the abandoned Mill and Timber Reserve for the benefit of Indians, within the limits of the grant to said Company, it was *held*, that lands in question were covered by the said reserve at the date of definite location of the line of route by the Company. Under the well settled rule of the Department, they were protected against the grant to the Company, and on the subsequent removal of the reservation reverted to the mass of the public land, subject to general disposal under appropriate laws.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., January 15, 1873.

REGISTER AND RECEIVER, *Carson City, Nevada.*

GENTLEMEN :—The State of Nevada selected the following lands in your district under acts Sept. 4, 1841, July 4, 1866, and June 8, 1868, falling within the limits of the grant to the C. P. R. R. Co., and also within the boundaries of the late mill and timber Reserve, on the Truckee River, set apart for Indian purposes by President's order of April 28, 1864, lot 2, N. W. 19, S. $\frac{1}{2}$ lot 3, S. W. 19, N. E. $\frac{1}{4}$, 19, N. $\frac{1}{2}$ lot 3, S. W. 19, S. $\frac{1}{2}$ lot 3, N. W. 19, N. $\frac{1}{2}$, lot 3, N. W. 31, and S. $\frac{1}{2}$ S. E. $\frac{1}{4}$, 31, T. 19 N., R. 18 E.

On the 10th of August last, Henry Beard, Esq., attorney for the C. P. R. R. Co. was allowed to present such objections as the R. R. Co. might have to the approval of the tracts mentioned above. No objection having been filed within that time, this office, under date Nov. 25, 1872, submitted a list embracing these and other lands to the Hon. Secretary of Interior, and recommended that the same be approved to the State of Nevada.

This action was based upon the proposition that the lands in the odd sections falling within the reserve were excepted from the operation of the R. R. grant. On the 30th of Nov. last, Mr. Beard advised this office that he would at an early date present his objections to the approval of said selections, and under date of 4th Dec. last, filed an argument in support of the right of the R. R. Co. to the odd sections within the late reserve which falls in Tps. 18 and 19 N., R. 18 E.

These townships were withdrawn for railroad purposes Oct. 4, 1864. The railroad was constructed opposite said lands as early as Oct. 25, 1867, as appears from a map filed by said company.

By the act of July 1, 1862, granting lands in aid of the construction of this road, there is excepted from the grant lands sold, reserved, or otherwise disposed of by the United States, or to which a pre-emption or homestead claim may have attached at the time the line of the road was definitely fixed.

The act of July 2, 1864, making an additional grant to said road, provides in the fourth section, among other things, that said grant shall not defeat or impair any pre-emption, homestead, swamp-land, or other lawful claim, nor include any Government Reservation.

The circumstances which led to the setting apart of this reserve are shown by a letter from the Hon. Commissioner of Indian Affairs to the Department dated June 30, 1868, a copy of which is found with the argument of Mr. Beard, to be as follows:

"In a letter dated February 26, 1864, Hon. James W. Nye, the

Governor and ex-officio Superintendent of Indian Affairs of Nevada, enclosed to Hon. J. P. Usher, Secretary of the Interior, the field notes and plat of survey of the exterior boundaries of this reservation. On the 15th April, 1864, the papers were referred to this office. (Indian Office.) On the 20th, same month, they were returned to the Department with the recommendation that the President of the United States be requested to direct that the area embraced in the field-notes and plat be excepted from the public surveys, for the purpose of a mill and timber reservation, for the use and benefit of the Indians of the Territory."

"On the 28th of April, 1864, the papers were submitted by the Hon. Secretary of the Interior to the President, with the recommendation that said mill and timber reservation be excepted from public survey, and on the same date the papers were endorsed by the President, as follows: 'Let the reservation be excepted from public survey.'"

The reservation so set apart embraced 20,531 $\frac{23}{100}$ acres. It is insisted by the railroad company that the object aimed at by the reservation of these lands was to set apart the timber on the tract, partly for the use of the Indians, and at the same time to preserve such timber for the use and benefit of the railroad company in constructing their road. I find nothing in the papers relating to the case tending to show that there was anything before the President on the 28th April, 1864, when he gave the order for the reservation, indicating that the land was to be reserved for any other use than as a mill and timber reservation for Indian purposes; that the railroad company or their interests had been consulted by the Indian Bureau or the Department, in recommending the reservation, or that the lands reserved were liable to fall within the limits of the grant to the railroad company. In short, no reference appears to have been made to the railroad company in the papers accompanying the order of reservation. It is hardly reasonable to assume that those officers had any other reasons than those assigned, for recommending that the lands be reserved for Indian purposes. It is clear to my mind that the land was set apart as a mill and timber reservation for Indian purposes, and for no other. It is equally clear that it was such a reservation as might be used for that purpose temporarily or perpetually, as might be required by the Government. It was, to use the language of the act of July 2d, 1864, a "Government Reservation." I do not regard the circumstances which led to the abandonment of the reserve in 1868, or to the extension of the public lines of survey over said reservation, prior to the relinquishment, as having any bearing upon the case, and hence have not considered them.

But the attorney for the railroad company insists that the order of reservation, dated April 28, 1864, was subsequent to the act of July 1, 1862, granting lands to said company, and the conditions of that grant having been complied with and fulfilled, so far as the United States is concerned, the grant takes effect by relation, and the title of the company vests from the date of the grant. This view, however, is not in consonance with the construction uniformly placed on the terms of this and similar grants by the Department.

This same view was advanced in reference to the Iowa Railroad grants by act May 15, 1856. The question was presented to Mr. Attorney General Cushing by the Department, who, in an opinion dated Dec 19, 1856, says:

"But the grant was not merely subject to future events for the determination of the specific section of land to which it would attach; it was

also subject not to vest at all, or to be divested according to future events; for the State of Iowa might not accept or might fail to execute conditions annexed to the grant, such, for instance, as the primary one of entering upon the construction of the contemplated roads.

"If the act stopped here there would be nothing in it to constitute, on the day of its enactment, an actual severance of certain sections from the public domain or transfer to the State of Iowa a vested interest in the same."

"It is not a grant of lands by their character, like a grant of swamp lands to a State, or a grant of specific sections of riparian land, fixed at the time by the course of a river. Instead of this it is a grant on a line of unlocated railroads. To assume, in such a case, the grant vests at once, would deprive the general proprietor of the use of his land, not only within six sections of a line certain, but anywhere and everywhere, within any possible line. Such an effect is not to be presumed. To be conceded it must be expressly enacted. But the act does not leave the question here; it proceeds implicitly to negative the supposed effect. It contemplates that the United States shall retain power to convey within all the possible limits of the grant, either by ordinary sale or on pre-emption, up to the time when the routes of said roads are definitely 'fixed,' and provides for the case by granting contingently substituted lands beyond the original limits.

"In my opinion, therefore, the act by its text makes a conditional grant *in presenti* in the nature of a *float*, and which does not attach to any particular parcel of the public lands until the necessary determinative lines shall have been fixed on the face of the earth." 18 Opins., 244.

In a decision by the Hon. Secretary of Interior, dated 29th of April, 1871, in the case of *Daniel Freeman v. Union Pacific R. R. Co.*, in which he fully concurs in the opinion of the Assistant Attorney General in the case, the nature of this grant was fully considered. The latter officer, in speaking of the terms of the grant, says:

"The grant was a present grant, but in the nature of a float until the line of the road was 'definitely fixed;' when definitely fixed it became operative and title vested."

In support of this the Assistant Attorney General quotes the last paragraph of Mr. Cushing's opinion given above, and states:

"Attorney General Black says, in a like case, when the definite location of the road has been made, 'the title to each particular parcel will be as complete as if it had been granted by name, number, and description.' (9 Opins., 41.)

"And the Supreme Court says, in *Railroad v. Smith* (9 Wallace, 95), that 'the title vests by the locations of the road,' and in *Railroad v. Fremont* (9 Wallace, 89), that title vests when 'the line of the railroad was definitely fixed on the ground.'"

From the foregoing it is clear that the grant became effective upon the definite fixing of the line of road, and that the Company could have no interest in the land prior to that date, thus rejecting the view contended for by the Railroad Company.

It would seem that all the classes of lands and claims referred to in the acts of 1862 and 1864, granting lands to this company, as excepted from the operation of the grant, should be placed upon the same footing in adjusting such grant. Now in the case of *Boyd v. B. & Mo. River R. R. Co.* the Hon. Secretary, on 28 April, 1871, held that there having been a

valid homestead claim subsisting at the date the right of the road attached, that upon the subsequent abandonment or cancellation of such claim the land covered thereby reverted to the United States, and was excluded from the grant to the Railroad Company.

The Acting Secretary, on 15 August last, in case of the *Missouri, Kansas & Texas R. R. Co. v. John Block*, a homestead claimant, held that the homestead claim which operates to exclude land from a railroad grant, must be at the definite location of the road, or whenever the grant by its terms became effective, a valid and subsisting right, capable of being perfected into a perfect title. That if it be such an one as the Board provided for by acts of August 3, 1846, and June 26, 1856, would confirm, it is such as would exclude the land from going to the road, because it is a claim recognized by law as capable of being perfected.

The principle enunciated in the above decision is regarded as applying equally to pre-emption cases where the grant is similar in terms to the one referred to above.

In the case of *W. P. R. R. Co. v. John Spratt*, the Hon. Secretary, July 31, 1872, concurs in the opinion of the Assistant Attorney General, dated July 17, 1872, in which it was held that a tract covered by a pre-emption claim at the date the line of road is definitely fixed, such tract is reserved from the operation of the grant, and upon the subsequent failure of the claim it reverts to the government; that if the tract was not covered, it will pass to the railroad company. Here is an authoritative construction of the grant respecting homestead and pre-emption claims, and of the nature of such as would defeat the operation of the grant to the railroad company. The ruling of Mr. Secretary Cox on the 7 July, 1870, in the cases of *R. C. Sargeant et al. and S. F. Treadway et al. v. W. P. R. R. Co.*, is in perfect harmony with the rulings cited above in reference to homestead and pre-emption claims. In these cases the appellants were claimants under sec. 7, act 23 July, 1866, to certain lands in the limits of the rejected Moquelemas grant in the Stockton district, California.

It was held that, as this claim under the Mexican grant had not been declared invalid by the United States Supreme Court at the time the grant to the railroad company became effective, the land was excluded from the operation of the grant; for the lands could not be deemed and considered as a part of the public domain in such a sense as that a grant in general terms would attach to them, but that they were reserved, to use the terms of the act of March 3d, 1853, and were not relieved until after the rejection by the Supreme Court of the United States. It was further held that the tracts were not in the grant to the railroad company, if they were reserved when the right of the road attached, for a temporary or permanent purpose; and that although the objects for which the reservation was made were afterwards accomplished, and a necessity for it no longer existed, the lands when restored would not revert to the railroad company. Upon a reconsideration of this case by the Department, Mr. Acting Secretary Otto, on the 21 March, 1871, directed the decision of Mr. Secretary Cox to be carried into effect.

See decision of department, dated July 3, 1871, based on opinion of the Assistant Attorney General, dated July 1, 1871, rejecting the right of the W. P. R. R. Co. to lands in the Roland grant.

See decision of Mr. Secretary Browning in case of *Christian Moeller v. Southern Pacific R. R. Co.*

See also decision of the Department of 21st July, 1871, based on the opinion of the Assistant Attorney General, dated July 15, 1871, in case of *Abraham Musick v. Mrs. E. McKillip and W. C. R. R. Co.*

Keeping in view the language of the grant to the C. P. R. Co., and the rulings of the Department to which reference has been made, that lands covered by a homestead or pre-emption claim at the date of the definite location of the road are *excepted* from the grant, it would be inconsistent to hold that lands reserved for Indian or other purposes at such time, should, upon their release, *enure* to the grant.

It would also seem that the principles which have been laid down by the Department in the cases of Mexican and Spanish grants should apply with equal force to an Indian Reserve, existing at the date the title of the R. R. Co. vested under their grant.

In case the reservation had been made permanent, the R. R. Co. would not, I apprehend, have asserted claim to the lands within its limits. Now, if the reservation was capable of excluding the lands from the grant at the date of the definite location of the road, it seems to me that there can be no question as to their permanent exclusion from the operation of such grant. It is equally clear to my mind that the railroad company acquired no rights to lands in the limits of said Reserve, at the date of the definite location of their road, and that they could not do so subsequently.

It is further claimed by the attorney for the railroad company that the Department, in letters to this and the Indian Office, bearing date 13th July, 1864, recognized the right of the railroad company to land in said Reserve, and hence the case was one of past adjudication, and upon the principle laid down by the Hon. Secretary in the case of *Latimer et al. v. Iowa Falls and Sioux City Railroad Company*, the rights of the Railroad Company to the land cannot again be called in question by this Office.

Let us see how this correspondence came about, and what subject was then under consideration by the Department.

The original order for the reservation was referred to the Indian Office by the Department. A copy of the plat and field-notes of the survey of the Reserve was furnished this Office, with letter from Commissioner of Indian Affairs, dated May 17, 1864, and on the 19th of July, 1864, the same Office transmitted to this Office a copy of the order for the reservation. The Hon. Secretary of the Interior, in the letter to this Office dated the 13th of July, 1864, referred to above, having under consideration the protest of certain settlers on said reservation to the appropriation of the land for Indian purposes, stated:

"The President has ordered the reservation of the land, and from the plats before me it appears that it will fall within the strip of country through which the Pacific Railroad will probably pass. To promote the well-being of the Indians, and to facilitate the construction of the Pacific Railroad, it is important that depredations should be prevented."

On the same date the Honorable Secretary addressed a letter to the Commissioner of Indian Affairs, directing him to instruct the officers of the Indian service in Nevada that the timber on this reserve "must be preserved from waste and depredations, and that so far as it was cut and removed, must be applied directly to the erection of improvements required for Indians, and is not to be sold or exchanged for the benefit of the Indians indirectly."

"The Pacific Railroad will probably pass in the vicinity of the re-

serve, and the railroad company may eventually claim rights in the land, should it not be required for Indian use perpetually."

The title of the road did not vest in lands in this locality until about two years subsequent to the date of these instructions. Had the reserve been abandoned prior to that date, no one will question that lands on said reservation would inure to the railroad grant.

It will be borne in mind that the act of July 1, 1862, in the second section, grants the right to appropriate materials from the public lands to be used in the construction of the road. In view of these facts it is apparent that the object of the Department was to preserve the timber on the reserve from waste and depredation; but I am unable to see how said instructions of the Department can be construed into an award of the land to the Railroad Company. I have shown that the Department in said instructions was not promulgating to this and the Indian Office the order for the reservation, but considering the protest of certain parties to the reservation of the land for Indian purposes. It is clear that the Department did not have under consideration the right of the Railroad Company to the land in question, and did not intend to make award of it to said Company, from the fact, as I have before shown, that under the ruling of the Department, dating as far back as 1856, the Railroad Company could not acquire any title to the lands until the line of the road was definitely fixed. In 1864 this Railroad Company had acquired no interest in lands in that locality, for the road was not definitely located until about two years from that date.

The conclusions reached are as follows:

First. That the land was duly reserved by the President, April 28, 1864, for mill and timber purposes for the benefit of the Indians in Nevada, and for no other purpose; the right acquired by the Railroad Company to cut timber from the land for use in constructing their road, being the only privilege recognized by the Department in its correspondence on the matter.

Second. That the reserve was made prior to the definite location of the road, and was not relinquished until July 15, 1868, a time subsequent to such definite location; and

Third. That the opinions of the Attorney General, and the decisions of the Department, are adverse to the claim set forth that the right of the grantee relates back to the date of the granting act, and that said opinions and decisions recognize the right of the road as attaching and holding any tract only from the time of definite location.

I therefore decide that the lands being reserved for Indian purposes at the date the railroad grant became effective, and not being relinquished until a subsequent date, were reserved lands under the meaning of the grant, and do not inure to or form a part of said grant, but are public lands and open to disposal as such.

The parties in interest will be notified of this decision through this Office, and allowed sixty days for appeal. In the meantime the approved list embracing said selections will remain suspended in this Office.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

Affirmed on appeal by the Secretary, June 3, 1874.

No. 434.

WESTERN PACIFIC RAILROAD CO., v. DILLINGHAM ET AL.

CENTRAL PACIFIC R. R. GRANT A PRESENT GRANT.—The grant of alternate sections of land to the Central Pacific Railroad Company, under Section 3 of the act of Congress of July 1, 1862, (12 Stat., 492,) is a *present* grant of the number of sections designated, which became specific and attached to every alternate section subject to the grant lying within the prescribed limits, as soon as the line of the road becomes "definitely fixed."

The grant having attached to the alternate sections the moment the line of the road became "definitely fixed," could only be defeated by a failure of the grantee to perform the conditions subsequent, of building the road within the time and in the mode prescribed.

MEXICAN GRANTS—RESERVED LANDS.—The fact that some of the alternate sections within the prescribed limits of the grant, at the time the line became "definitely fixed," were situate within the exterior limits of land claimed under an invalid Mexican grant, does not constitute such lands "reserved" lands, within the meaning of that term, as used in said section 3 of said act.

Lands lying within exterior boundaries of land claimed under an invalid Mexican grant were a part of the domain of the United States on July 1, 1862, and were not, by reason of such claim *only*, within any of the exceptions mentioned in the act of Congress of that date, or of any of the acts supplementary thereto, granting lands to aid in the construction of the Pacific railroads; and the alternate sections of such lands, lying within the prescribed limits, to which no other right had attached at the time the line of the road became "definitely fixed," were within the terms of the grant to the railway company, and the title thereto became irrevocably vested in said company upon the performance of all the conditions prescribed by said several acts. (See *Pacific Law-Reporter*, vol. 8, No. 12, Sept. 22, 1874.)

Held—That the lands in contest were not excluded from the grant by reason of their having been within the claimed limits of the private land claim "Los Medanos" at the time of the definite location of the line of the road, and subsequently excluded from the confirmed claim, but were "public lands" at the date of definite location, and subject to the grant.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., May 14, 1875.

SIR:—I have examined the case of the *Western Pacific Railroad Company v. H. E. Dillingham et al.*, involving title to certain lands in Tp. 2 N., R. 1 E., M. D. M., San Francisco, California, on appeal from your decision of June 26, 1874.

The lands are within the limits of the grant to said railroad, and were withdrawn Jan. 30, 1865.

The line of the road was definitely located in April, 1868. The several defendants made their respective settlements after the withdrawal, and most of them after the definite location of the road, with the exception of M. H. Boothby. He settled in November, 1864, and has a better title than the railroad company.

The other defendants settled after the lands were withdrawn for the benefit of the railroad, and their rights are inferior to those of the railroad, unless the lands were excluded from the grant to the company. They were included at the time of definite location within the claimed limits of the private land claim, "Los Medanos," but were excluded from the confirmed claim by final decree in 1869, which was after the definite location of the road.

This case, therefore, presents the naked question whether lands in California, included within the exterior boundaries of a private land claim at the time the final location of the line of the road is made, but

afterwards excluded from the confirmed grant and survey, pass to the Western Pacific Railroad Company, or become public lands, liable to pre-emption entry.

It is claimed by the company that they are included in the grant, and by the defendants that they are "reserved," and therefore excluded from the same.

At the outset of this inquiry it is important to carefully consider the language in which the grant is made, and ascertain, if possible, its true signification. The grant is made by the 3d section of the act of July 1, 1862, (12 Stat., 493,) and the 4th section of the act of July 2, 1864, (13 Stat., 358,) and the 2d section of the act of March 3, 1865. (13 Stat., 504.)

The said 3d section grants to the company "every alternate section of public land, designated by odd numbers, to the amount of five alternate sections per mile on each side of said railroad on the line thereof, and within the limits of ten miles on each side of said road, not sold, reserved, or otherwise disposed of by the United States, and to which a pre-emption or homestead claim may not have attached at the time the line of road is definitely fixed; *Provided*, That all mineral lands shall be excluded from the operations of this act."

The 4th section of the act of 1864 in terms amends the said 3d section by striking out the word "five," where the same occurs, and inserting the word "ten," and then goes on to provide that "any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp-land, or other lawful claim, nor include any Government reservation or mineral lands."

What is the meaning of the word "reserved," as used in the said 3d section?

The context would seem to indicate that the reservation referred to was one made by the United States for some such purpose as the Government usually creates reservations. Such is the natural meaning of the words in the connection in which they are found. "Sold and reserved," or otherwise disposed of by the United States.

The word "otherwise," as thus used, fairly implies that the sale and reservation, immediately preceding, were made by the United States.

If there be doubt about the meaning of the word "reserved," as used in the 3d section of the act of 1862, that doubt is, I think, removed by the 4th section of the act of 1864.

The 4th section expressly, and in terms, amends section three in the manner I have before stated, and then contains the important clause that "any lands granted by this act, or the act to which this is an amendment, shall not defeat or impair any pre-emption, homestead, swamp-land, or other lawful claim, nor include any *Government reservation* or mineral lands."

It will be observed that the description of the lands granted by the third section is left unchanged by the fourth section. The only change relates to those lands which are excepted from the grant. Both sections enumerate pre-emption and homestead claims and mineral lands.

The fourth omits the words "not sold, reserved, or otherwise disposed of by the United States," found in the third section, and substitutes therefor the words "swamp-land or other lawful claim, nor include any Government reservation."

Now, the plain inference to be derived from this legislation is that Congress intended to revise the subject of what lands should be ex-

cluded from the grant, and intended that the fourth section should take the place of and stand as a substitute for so much of the third section as related to the description of the lands to be excluded from the grant. Else why did it repeat homestead and pre-emption claims and mineral lands in the fourth section?

If it was intended simply to *enlarge* the third section, there was no occasion for repeating what was already clearly and explicitly provided for in that section. Upon the authority of *Murdock v. City of Memphis*, (20 Wall., 616,) I should have no hesitation in holding that the fourth section was an implied repeal of that portion of the third section which relates to the lands excluded from the grant, if the fourth section did not purport to amend the third section, which it does, and therefore it is not necessary to hold that there is a repeal by implication. In the case of *Murdock v. City of Memphis*, the question arose whether the 25th section of the judiciary act of 1789 was repealed by the 2d section of the act of 1867.

Miller, Judge, in delivering the opinion of the court, said:

"The act of 1867 has no repealing clause, nor any express words of repeal. If there is any repeal, therefore, it is one of implication. The differences between the two sections are of two classes, namely, the change or substitution of a few words or phrases in the latter for those used in the former, with very slight, if any, change of meaning, and the omission in the latter of two important provisions found in the former. It will be perceived by this statement that there is no repeal by positive new enactments inconsistent in terms with the old law. It is the words that are wholly omitted in the new statute which constitute the important feature in the questions thus propounded for discussion.

"A careful comparison of these two sections can leave no doubt that it was the intention of Congress by the latter statute to revise the entire matter, to which they both had reference, to make such changes in the law as it stood, as they thought best, and to substitute their will in that regard entirely for the old law upon the subject. We are of opinion that it was their intention to make a new law, so far as the present law differed from the former, and that the new law, embracing all that was intended to be preserved, of the old, omitting what was not so intended, became complete in itself, and repealed all other law on the subject embraced within it. The authorities on this subject are clear and uniform. (*U. S. v. Tynen*, 11 Wall., 88; *Henderson v. Tobacco*, 11 Wall., 652; *Bartlett v. King*, 12 Mass., 537; *Cincinnati v. Cody*, 10 Pick., 36; *Sedg. on Stat.*, 126.)

"The result of this reasoning is that the 25th section of the act of 1789 is technically repealed, and that the 2d section of the act of 1867 has taken its place. What of the statute of 1789 is embraced in that of 1867 is, of course, the law now, and has been ever since it was first made so. What is changed or modified is the law, as thus changed or modified. That which is omitted ceased to have any effect from the day that the substituted statute was approved."

If I am correct in the construction I have given in this fourth section, then the only reservation that can operate to except the lands in controversy from the grant is a "*Government reservation*," and there is no pretence that any such reservation has ever been created.

But the case does not rest upon this view alone; there are others that require consideration.

The final rejection of these lands from the confirmed grant did not

change their ownership. They were then the property of the United States, and being the property of the United States, and being undisposed of, they were subject to disposal by the United States, and subject to being granted to a railroad company. The granting clause in the acts now under consideration clearly embraces them, unless they were within the exception of "reserved" lands. There is no statute that in terms makes lands within the claimed limits of a Mexican grant, but finally excluded from the survey, "reserved" lands. And there is no order, made by any competent authority, that purports to have that effect. I have carefully examined the legislation in regard to the public lands in California, and I can find nothing that declares such lands to be "reserved."

The first act on that subject was the act of March 3, 1851. (9 Stat., 631.) That did not undertake to dispose of the public lands.

Its scope and aim was to ascertain what lands belonged to private parties and what were public lands.

The next legislation, in the order of time, was that of August 31, 1852. (10 Stat., 91.) It was embraced in an act making appropriations for the civil and diplomatic expenses of the Government, and made an appropriation for the survey of the private claims in that State that had been presented in good faith to the board of land commissioners. It also authorized the surveyor-general of that State to survey such unconfirmed claims as the extension of his public surveys should find, within the immediate sphere of his operations, and which he is satisfied ought to be respected, and actually surveyed in advance of confirmation."

It did not undertake to declare what should be done with such unconfirmed claims when surveyed, or to provide that they should be free from disposal by the United States

The act relied upon to make the lands in controversy "reserved" is the act of March 3, 1853. (10 Stat., 244.)

That act is entitled "An act to extend pre-emption rights to certain lands therein mentioned." It provided "that the pre-emption laws of the United States, as they now exist, be, and they are hereby, extended over the alternate *reserved* sections of public lands, along the lines of all the railroads in the United States wherever public lands have been or may be granted by acts of Congress; and that it shall be the privilege of persons residing on any of said *reserved* lands to pay for the same in soldiers' bounty-land warrants, estimated at a dollar and twenty-five cents per acre, or in gold or silver, or in both, in preference to any other person, and at any time before the same shall be offered for sale at auction."

It further provided that no persons should be entitled to the benefits of said act except such persons as had settled and improved such lands prior to the final allotment of the alternate sections to the railroads by the General Land-Office. And it concluded with the following:

"*Provided further*, That any settler who has settled or may hereafter settle on lands *heretofore reserved* on account of claims under French, Spanish, or other grants, which have been or shall be hereafter declared by the Supreme Court of the United States to be invalid, shall be entitled to all rights of pre-emption granted by this act and the act of 4th of September, 1841, entitled 'An act to appropriate the proceeds of the public lands, and to grant pre-emption rights,' after the land shall have been released from reservation, in the same manner as if no reservation existed."

In analyzing this statute it will be noticed that the even sections along the granted limits to railroads are called "reserved sections;" that it speaks only of lands "*heretofore reserved*;" and that in enumerating the claims under foreign grants it speaks of French and Spanish grants, and makes no mention of *Mexican grants*, while the acts of 1851 and 1852 particularly specify Mexican grants.

If it had been intended that this legislation should apply to the State of California, some portions of which were almost literally covered with Mexican grants, how does it happen that no mention is made of them by name?

It would have been the most natural thing in the world to have named them specifically, and the fact that they are entirely omitted in the specifications of foreign grants, is very strong evidence that the State of California was not in the mind of the law-makers when this act was passed.

There were no reservations in California *theretofore* reserved. There was at that date no statute authorizing pre-emption claims in California. There were reservations outside of California *theretofore* created by statute for said act to operate upon. Such were the acts of 1805, 1806, and 1807, (2 Stat., 325, 391, 440,) the acts of March 3, 1803, March 31, 1808, February 15, 1811. (2 Stats., 232, 480, 617.) The acts of March 26, 1804, April 21, 1806, (2 Stats., 279, and 395,) protected from sale the tracts duly claimed and identified and embraced in the report of the Commissioner "till after the final decision of Congress thereon," and a similar provision applied to the State of Missouri, act of July 9, 1832. (4 Stat., 567.) A like provision applied to Louisiana, act of March 3, 1811. (2 Stat., 662.)

These considerations satisfy my mind that Congress did not intend that the said act of March 3, 1853, should apply to the State of California.

It did immediately thereafter, and on the said 3d of March, 1853, pass an act which did unequivocally apply to the State of California, and which was entitled "An act to provide for the survey of the public lands in California, the *granting of pre-emption rights therein*, and for other purposes." (10 Stat., 244.) This was the first act under which original rights could be acquired in the public lands of that State as against the United States.

Its language is utterly inconsistent with the idea that Congress understood that lands within the claimed limits of a foreign grant were reserved lands. The 6th section provides: "That all the public lands in the State of California, whether surveyed or unsurveyed, with the exception of sections sixteen and thirty-six, which shall be and hereby are granted to the State for the purposes of public schools in each township, and with the exception of lands appropriated, under the authority of this act, or *reserved by competent authority*, and excepting *also the lands claimed under any foreign grant or title*, and the mineral lands, shall be subject to the pre-emption laws," etc.

If the word "reserved" had been understood as including lands claimed under a foreign grant, the clause that immediately follows, "and excepting *also the lands claimed under any foreign grant or title*," would have been omitted. It was unnecessary and useless. The fact that it was inserted is satisfactory proof that it was deemed material, and that without it "lands claimed under any foreign grant" would not have been excluded, in the opinion of the law-making power, from pre-emption filings.

Congress, in its legislation in regard to the public lands of California, seems to have studiously avoided using the word "reserved" in such a manner as to make it reasonable to construe it as including lands claimed under a foreign grant.

In the very important act of July 23, 1866, "to quiet land titles in California," (14 Stat., 218,) it provided for the confirmation of certain selections made by the State, but provided that no selection should be confirmed "to any lands which have been *reserved* for naval, military, or Indian purposes by the United States, or to any mineral lands, or to any land held or claimed under any valid Mexican or Spanish grant."

And this has not been accidental. It has all along understood the use of words, and has been able to express its meaning clearly in regard to Mexican claims. In its legislation for New Mexico, it provided, touching Mexican grants, that "until the final action of Congress on such claims, all lands covered thereby shall be *reserved* from sale or otherwise disposed of by the Government, and shall not be subject to the donations granted by the provisions of this act." (10 Stat., 309, sec. 8.)

The grants to the railroads running to the Pacific were intended to be liberal in character. Especially is this true of the grant of 1864. It should receive a reasonable construction, and not be frittered away by nicely drawn distinctions. Giving it such a construction, I am unable to declare that the lands in controversy were excepted from the grant. I prefer rather to follow the decision of the circuit court of the United States in California, in the case of *Sanger v. Sargent*, and of the Supreme Court of that State in the *Central Pacific R. R. v. Yolard*, both recently made, and hold that they are included in the grant, and thereby return to the ruling that prevailed for many years in this Department, and was changed by my immediate predecessor, and followed by me upon the authority of the opinion of Attorney-General Akerman.

I reverse your decision as to all of the defendants except M. H. Boothby, and as to him I affirm the same, and herewith return the papers transmitted with your letter of Dec. 3, 1874.

Very respectfully,

C. DELANO, *Secretary*.

To the Commissioner of the General Land Office.

No. 435.

SUTTON v. SIOUX CITY AND ST. PAUL R. R. CO.

Appeal from Commissioner's decision holding Sutton's entry for cancellation.

The records of the General Land Office show that at the date of definite location, the tract in contest had been selected by the State as swamp land under the act of Sept. 28, 1850, and it is claimed that this selection, which was cancelled subsequently to the definite location, removed the land from the operation of the grant.

Held—That the act of 1850 was a grant to the State *in presenti*, taking effect, if at all, at the date of its passage, upon all lands then swamp and overflowed.

The fact that the selection was cancelled shows that the land was *not of that character* at the date of the act. It was not, therefore, affected by the act, and being unappropriated at the date of the definite location, it inured to the grant.

Decision by the Secretary, Sept. 10, 1874.

No. 436.

GOODNO v. LEAVENWORTH, LAWRENCE AND GALVESTON R. R. CO.

The land in controversy is within indemnity limits of the grant to said Company by act of March 3, 1863. May 5, 1863, a withdrawal was made for the benefit of the road under this grant. The diagram transmitted to the local officers, upon which the withdrawal was made, did not embrace the tracts in question, differing in this respect from that retained in the General Land-Office. On the 25th May, 1866, the tracts in question were entered with A. C. S., by one Rowley. The line of road was definitely located Nov. 15, 1866. On the 13th March, 1869, the entries by Rowley were cancelled by the Land-Office, on the ground that the land was included in the withdrawal of 1863. Rowley did not appeal, but withdrew his scrip and relocated it.

Held—That the locations of Rowley, with A. C. S., of the tracts in question, were regular in their inception, and at the time of definite location of the road, constituted valid subsisting claims. As such they clearly excepted the land from the grant. Upon subsequent erroneous cancellation, the tracts reverted to the Government and became subject to entry.

Decision by the Secretary, March 31, 1874.

TITLE V.—STATE SELECTIONS.

I. CALIFORNIA.

No. 439.

CIRCULAR.

Selections for school purposes in the State of California.

GENERAL LAND OFFICE, August 21, 1862.

REGISTERS AND RECEIVERS, *Land-Offices, California.*

GENTLEMEN :—The object of this circular-letter is to secure uniformity of action in making selections for school purposes under the following acts of Congress :

The 6th section of the act of March 3, 1853, entitled "An Act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," grants to the State of California sections 16 and 36 in each township for school purposes, and the 7th section of the same act provides: "That when any settlement, by the erection of a dwelling house or the cultivation of any portion of the lands, shall be made upon the 16th and 36th sections before the same shall have been surveyed, or where such sections may be reserved for public uses, or taken by private claims, other land shall be selected by the proper authorities of the State in lieu thereof, agreeably to the provisions of the act of Congress approved the 20th of May, 1826, entitled 'An Act to appropriate lands for the support of schools in certain townships not before provided for,' and which shall be subject to approval by the Secretary of the Interior." See Statutes at Large, Vol. X., pages 246 and 247.

The act of the 26th of February, 1859, U. S. Statutes at Large, Vol. XI., page 385, provides: "That where settlements, with a view to pre-emption, have been made before the survey of the lands in the field, which shall be found to have been made on sections 16 and 36, such sections shall be subject to the pre-emption claim of such settlers; and if they, or either of them, shall have been reserved or pledged for the use of schools or colleges in the State or Territories in which the lands lie, other lands of like quantity are hereby appropriated in lieu of such as may be patented to pre-emptors; and other lands are also hereby appropriated to compensate deficiencies for school purposes where said sections 16 and 36 are fractional in quantity, or where one or both are wanting by reason of the township being fractional, or from any natural cause whatever: *Provided*, That the lands appropriated by this section shall be selected and appropriated in accordance with the principles of adjustment and the provisions of the act of Congress of May 20,

1826, entitled 'An Act to appropriate lands for the support of schools, in certain townships not before provided for.'"

Under the provisions of the foregoing act of 1859, where said sections 16 and 36 are fractional in quantity, or where either of them are wanting by reason of the township being fractional, or from any natural cause whatever, the State will be entitled to other lands as indemnity for such deficiencies, to be selected and appropriated in accordance with the principles of adjustment and the provisions of the act of Congress of May 20, 1826, viz: For each fractional township containing a greater quantity of public land than three-quarters of an entire township—that is, more than 17,280 acres, the State will be entitled to two sections, or 1,280 acres.

For each fractional township containing a greater quantity of public land than one-half, and not more than three-quarters of a township—that is, more than 11,520 acres and less than 17,280 acres, the State will be entitled to one and a half section, or 960 acres.

For each fractional township containing a greater quantity of public land than one-quarter, and less than one-half of a township—that is, more than 5,760 acres and less than 11,520 acres, the State will be entitled to one section, or 640 acres.

For each fractional township containing a greater quantity of public land than one entire section, and less than one-quarter of a township—that is, more than 640 acres and less than 5,760 acres, the State shall be entitled to a half section, or 320 acres.

The law directs that the *selection* shall be made by the Secretary of the Interior, and the following rules are prescribed for your government:

1st. Where the lands have not been offered at public sale, the selections are to be made prior to said sale. The school agents may recommend the selections, and it may be proper for you to give notice to such agents that, prior to a certain day, to be fixed by you, recommendations will be received from them for school selections for certain townships, which townships will be specially designated in said notice. You will bear in mind, however, that no expense whatever will be incurred in the publication of such notice. If the school authorities, after service of notice, should fail to make any recommendations, you will report your own selections.

2d. The quantity of school land selected for any township is to be located within the limits of such township, provided a sufficient quantity of good agricultural land exists therein. If you are satisfied that a sufficient quantity of good land cannot be found therein, the selection is to be made in the nearest adjacent township wherein good land exists.

3d. Where a portion of section 16 or 36 exists in a township, an additional quantity of land only is to be selected as will, with the existing portions of said sections, make up the full quantity to which the township is entitled under the law.

4th. The selection of a section, three-quarters of a section, or half section, for any one township are to be made in one body of land if practicable; if not, in separate "quarter sections." A less quantity than one quarter section is not to be taken. Fractional sections are to be excluded except in cases where a portion of the section 16 or 36 exists in the township and selection has to be made of the balance of the quantity of land to which such township is entitled, and where the quantity cannot be located on a quarter or half-quarter section; in such

cases only may fractional sections be taken, according to the legal subdivisions, to make up the deficiency in quantity as nearly as practicable.

5th. In those townships and fractional townships fronting on bayous, rivers, lakes and water-courses, wherein the regular mode of surveying may have been departed from under the authority of law, and where a portion of the land consists of lots fronting on such bayou, river, lake, or water-course, and running back for quantity, and where there has been great irregularity in numbering the sections, in such cases where section 16 or 36 happens to fall on one of the small lots on the water courses, or on a section containing less than the proportional quantity of school land to which such township is legally entitled, such lot No. 16 or 36 should be reported by you in your abstract of proposed selections, and in addition thereto, so much of the section, whatever its number may be, as covers the ground which No. 16 or 36 would have covered had the township been regularly numbered, as will make the complement of school land to which such township is entitled.

6th. Fractional townships created by Indian reservations are not to be understood as coming within the meaning of the act, as when the township is completed it will then have its proper school lands.

7th. Where a township falls wholly within the limits of a private claim, there is no public land, and no grant for school purposes in said township; nor is the State entitled, under any law, to indemnity for the school section which would otherwise exist in said township, any more than it would be if the township were entirely covered by a lake or navigable stream; and no selections are to be made in such cases, nor will the State be entitled to indemnity for sections 16 and 36 which may fall on mineral lands.

8th. The selections under this act, as well as under the act of 1853, must be made in legal subdivisions, according to the official township plats of the public surveys on file in the local office at the time the selections are made or recommended to be made.

9th. The law allows selections to be made of surveyed lands, whether offered or unoffered. But no selection is admissible upon land to which a pre-emption or other valid claim shall be legally established, nor on any land which is or may be reserved from sale by any law of Congress or proclamation of the President of the United States, nor upon any tract which is reserved or withdrawn from market for any purpose whatever; nor upon any mineral land. It is therefore necessary that the agent of the State, in making the selections, should make such careful preliminary examinations as will enable him to select lands to which there may exist no valid claim by pre-emption or otherwise, which are not mineral, and to avoid embarrassment and delay consequent upon such conflicts. You will also examine the plats, records, and files of your office, and see that the selections are in all respects free from objections, and will certify that they are free from conflict, before the lists are reported to this Office.

Herewith you will receive forms to be used for selections under the respective acts. The form for selections under the acts of 1853 and 1859 requires the date to be given when the list is filed in your office, being the date when the same takes effect, and that it be certified and signed by the locating agent of the State, and certified by you as to the correctness of the same, before reporting to this Office.

The form for *proposed* selections under the acts of 1859 and 1826

must also be certified by you, and if recommended by the State authorities, that fact should also be stated thereon. The lists of selections under the respective acts should bear a regular but *separate and distinct series* of numbers from No. 1.

The tracts selected should be distinctly entered, in lead pencil, in your tract books and on the township plats, and be withheld from sale until you are officially advised of their approval or rejection by the Secretary of the Interior. When advised of the approval of such selections you will proceed at once to enter the same permanently, in red ink, in your tract-books, and on your township plats, and opposite the entry in the tract-books you will note the date of the approval, making reference, by its date, to the letter from this Office advising you of such approval.

In case of the rejection of a proposed selection, you will not fail to remove by India rubber the pencil marks on the township plats, and make entry of the facts in your tract-books.

You will retain a record of all lists reported to this Office, and when approved you will note the fact thereon, and refer to the date of the letter communicating such advice. Applications for the selections of school lands by the State can only be received and filed by you where the land is surveyed and the official township plats on file in your office. The State authorities will have no right to sell or dispose of any of the lands selected until they shall have been furnished with certified lists of the approval by the Secretary of the Interior.

You will acknowledge the receipt of this circular.

Very respectfully,

J. M. EDMUNDS, *Commissioner.*

No. 440.

CIRCULAR INSTRUCTIONS.

Under the act of March 3, 1871, relative to selections for the establishment of an Agricultural College in California.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 23, 1871.

REGISTER AND RECEIVER.

GENTLEMEN:—The attention of this office has been called to an act of Congress approved March 3, 1871, entitled "An act amendatory of an act entitled 'An act to further provide for giving effect to the various grants of public lands to the State of Nevada, approved June 8, 1868.'" (Part II., No. 35.)

In this act it is provided: 1st. "That the lands granted to the State of California for the establishment of an Agricultural College by the act of July 2, 1862, and acts amendatory thereto, may be selected by said State from any lands within said State subject to pre-emption, settlement, entry, sale, or location under any laws of the United States." 2d. That "such selections may be made in any legal subdivisions adjoining by sides so as to constitute bodies of not less than one hundred and sixty acres, or they may be made in separate subdivisions of forty, eighty, or one hundred and twenty acres respectively;" and— 3d. That "if lands be selected as aforesaid, the minimum price of which is two dollars and fifty cents per acre, they shall be taken acre for acre in part satisfaction of the grant, and the State of California shall pay to the

United States the sum of one dollar and twenty-five cents per acre for each acre so selected, when the same shall be patented to the State by the United States."

It is "*Provided further*, That where lands sought to be selected for the Agricultural College are unsurveyed, the proper authorities of the State shall file a statement to that effect, with the Register of the United States Land-Office, describing the land by township and range, and shall make application to the United States Surveyor General for a survey of the same; the expenses of the survey for field-work to paid by the State, provided there be no appropriation by Congress for that purpose. The United States Surveyor General, as soon as practicable, shall have the said lands surveyed, and the township plats returned to the United States Land-Office, and the lands so surveyed and returned shall for thirty days after the filing of the plats in the United States Land-Office, be held exclusively for location for the Agricultural College, and within said thirty days the proper authorities of the State shall make application to the United States Land-Office for the lands sought to be located by sections and part of sections: *Provided*, That any rights, under the pre-emption or homestead laws, acquired prior to the filing of the required statement with the United States Register, shall not be impaired or affected by this act."

You will please take notice of the foregoing provisions of said act of March 3, 1871, as modifying the law governing the subject, and allow the State the benefit thereof in any selections yet to be made in your land district under the grant referred to.

The Surveyor General will be duly instructed in regard to that portion of the act which may call for action on his part. Should the State authorities file in your office statements in regard to unsurveyed lands, as provided in the act, you will promptly report the same, and, after the filing of the plats of survey of the land in your office, proceed as therein directed. On the expiration of thirty days from the filing of the plats, should the tracts not be applied for and selected by the State authorities according to law, as modified by said act, you will so advise this office. Please acknowledge the receipt hereof.

Very respectfully, &c.,

WILLIS DRUMMOND, *Commissioner*.

No. 441.

INSTRUCTIONS.

Selections by the State of California of land granted for the establishment of an Agricultural College under the act of July 2, 1862, and amendatory act.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

July 8th, 1873.

GENTLEMEN:—Your attention is invited to the act of Congress approved March 3, 1871, which is as follows: (Part II No. 35.)

This act relates to the selection, by the State of California, of lands granted to said State for the establishment of an agricultural college, under the act of July 2, 1862, and acts amendatory thereto. The law authorizes the selection by the State of any lands subject to pre-emption, settlement, entry, sale, or location under any of the laws of the United States, excepting therefrom "mineral lands," and lands "upon

which there may be rightful claims under the pre-emption or homestead laws." All lands, therefore, whether offered or unoffered, with the above exceptions, are subject to selection by the State as agricultural college lands. The State is not confined to the selection of regular quarter sections, but selections may be made in any legal subdivisions adjoining by sides, so as to constitute bodies of not less than 160 acres, or they may be made in separate subdivisions of 40, 80, or 120 acres respectively. Under this clause the State will be permitted to select the smallest lot, or legal subdivision, viz: 40 acres.

The second proviso specifies that if "lands be selected, the minimum price of which is two dollars and fifty cents per acre, they shall be taken acre for acre in part satisfaction of the grant, and the State of California shall pay to the United States the sum of one dollar and twenty-five cents per acre for each acre so selected, when the same shall be patented to the State by the United States." Hereafter the State will be required to present separate applications for this class of lands, and you will report to this office in the usual form, separate lists of the same. When a list of this class of selections shall have been approved to the State by this Department, and a copy of the said approved list filed in your office, the Receiver, upon payment being tendered by the State of California of one dollar and twenty-five cents per acre for lands so listed, will receive the same, giving his receipt therefor. The said receipt will be issued in the form of an excess receipt, and the same will be numbered consecutively with full numbers in accordance with the regular cash series, having endorsed thereon in red ink the number of the State application to which they respectively belong, giving in all cases the Register's and Receiver's numbers, and will be reported to this office with your regular cash returns. A separate receipt will be issued on each State application, whether it be for 40, 80, 120, or 160 acres, and each receipt will bear a separate and distinct number. In addition to the above, the Register and Receiver will, at the close of each month, transmit to this office a joint report designating the lands for which payment has been made and the amount received therefor, and when it shall be shown that payment has been made by the State in accordance with the above requirement, for all the lands embraced in the approved list, the said lands will be patented to the State of California by this Department, in accordance with the provisions of the act, provided that no interfering rights shall have been found to exist at the date of approval. The third proviso relates to the selection by the State of unsurveyed lands, the survey thereof, etc.

When the application on the part of the State specified in the proviso is filed with the Register, that officer will be particular to note thereon the date of filing said application.

When the plat of a township specified in said State application is filed in your office, the Register, prior to accepting an application to select lands in said township, will require the State to file with him a certificate of the United States Surveyor General, stating that said township was surveyed by request of the State authorities, and that the State had fully complied with the third proviso of the law. Upon the filing of a map of this class of lands in your office, the Register will at once notify the proper State authorities of said filing, and if the State fails to make selection of lands in said townships within the period of thirty days from the date of such filing, the right to select will be forfeited.

Homestead and pre-emption claimants are protected on this class of lands, provided their rights attached prior to the filing of the required statement in your office by the State. You will, therefore, after the expiration of thirty days from the filing of the township plats, permit such claimants to file their statements in your office, notwithstanding the fact that the lands had been selected by the State; but parties desiring to file should make affidavit of settlement prior to the date of the first State application.

You will give to the State applications to select lands a regular series of numbers, commencing with No. 1, and thereafter number each application consecutively in the order in which they are received; giving also in each case the date of filing in your office, which is the date the selection takes effect.

The same rules given above, as to numbering, etc., will also apply to other selections by the State.

You will please acknowledge the receipt of this circular.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

No. 442.

WILSON v. C. P. R. R. ET AL.

An attorney for the State of California asked that the State should be made a party to this case. She did not attempt to initiate a right to the land until seven months after Wilson had paid for it under the 7th Section of the Act of July, 1866, to quiet land titles in California.

Held—That the land was appropriated, and could not be taken with Agricultural College Scrip by the State, seven months after Wilson had paid for it, although it might turn out, on the hearing of the contest, that the local officers erred in allowing Wilson to enter. Their proceedings were not void, although they may have been voidable.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, October 20, 1871.

SIR:—I have considered the application of the attorney for the State of California, to make the said State a party in the contested case of *Sanford E. Wilson v. C. P. R. R. Co., and California & Oregon R. R. Co.*, involving the W. $\frac{1}{2}$ of Sec. 14, T. 13 N., Range 3 E., Marysville, Cal., and now pending in the General Land-Office.

The Commissioner refused to grant the request. From this decision the State has appealed to the Secretary.

The records of the Land-Office show that the case was heard before the local officers on the 6th of August, 1870, and that on the 18th of the same month, Wilson made cash entry of the land in controversy. Seven months after the entry by Wilson, and on the 17th of March, 1871, the agent of the University of the State of California made application at the local office to locate the land under the act of July 2d, 1862, donating land for the benefit of agriculture and the mechanic arts. The local officers rejected the application, holding very properly that the land had been appropriated by Wilson's purchase, and therefore was not subject to the operations of the act which provided only for the disposal of *unappropriated* lands of the United States.

The State had no right to the land at the time of Wilson's entry, and did not even attempt to initiate such right until seven months thereaf-

ter. She now claims that his entry was void. It was made after a hearing, and by the proper officers. Whether they erred in their construction of the law is a question that will more properly arise on the hearing of the case now pending, and about which I express no opinion. I am clear that the most that can possibly be urged against the entry, is that it was irregular and voidable, and not void.

I am of opinion that the State has no interest in this land, and that she ought not to be made a party to the contest, and I advise that the decision of the Commissioner be affirmed.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by the Secretary, Nov. 2, 1871.

NO. 443.

BIRD ET AL. V. STATE OF CALIFORNIA.

This case involves the question as to what was a proper presentation of a claim at the local office.

Held—That a presentation at the office before business hours and in the absence of the officer was not a due presentation.

In all cases power of guardianship or attorney must be presented by parties desiring to locate Sioux Half Breed Scrip.

Advises that a certificate issue to the State for the lands, reciting that a patent had wrongfully and inadvertently issued to other parties.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., May 24th. 1871.

SIR:—I have considered the appeal case of *Joseph Bird et al. v. The State of California*, involving claim to the south half of Section 26, and the northeast quarter of Section 34, of Tp. 8 S., R. 4 W., in the San Francisco District of California. Originally the controversy included the north-west quarter of Section 35 in said Township, but there is now no question about the last named tract, as the State has selected other lands in its stead and the selection has been duly approved.

The facts are as follows: The State applied on the 23d of July, 1867, to select the first two tracts as indemnity selections for other lands, (school sections) to which she was entitled, but which were found to be included in private land grants. (Sec. 6, act July 23, 1866, 14 Stat., 220.)

At the date of application the lands were withdrawn for railroad purposes, and were on that account not subject to such selection. They were restored to market, October 19, 1868. On that day there was a sharp contest on the part of the agent for Bird and others on the one side, and the agent of the State on the other, to see which should succeed in obtaining these lands. Sometime between 8 and 8½ a. m., of that day, C. Gurnee, an attorney-at-law, appeared at the local land-office with certain Scrip certificates issued to the half-breed Sioux Indians under the act of July 17th, 1854, (10 Stat., 304,) and with a letter from Wm. S. Chapman, an attorney-at-law, asking that these certificates might be located on the lands in controversy. There was no power of attorney or other authority to Chapman from the persons named in the Scrip to locate the Scrip for them. There was no officer of the land-office present: no one there but a young man who notified Mr. Gur-

nee that he had no authority to receive or file any papers in the land-office. Thereupon Mr. Gurnee left the papers on the table, and he himself left the land-office.

About 8½ A. M., the agent of the State appeared at the land-office. Mr. Shanklin, the Register, was then there. The State agent had with him a list of re-applications from the State Surveyor General for these lands, and asked that they be duly filed in the land office. The Register received the list and filed the same, and marked thereon the time of filing, "October 19, 1868, at 8.30 A. M." This brought on a contest before the local officers. There were other parties who had filed for the land under the pre-emption laws, but though summoned, they made default, and did not appear or set up any claim to the land. The Register and Receiver, after hearing the proofs, rejected the Scrip locations for lack of evidence that they were made by a duly authorized party. They also rejected the application for the south half of Section 26, for want of evidence that the School Sections, in lieu of which it was made, had been included in private grants. The defective evidence was afterward supplied by both parties.

The Scrip locations were, pursuant to general instructions, forwarded to the General Land-Office, soon after they were made. An abandonment by the pre-emptors of all claim to the lands was filed in the General Land-Office, and on the 3d of June, 1869, counsel for the Scrip claimants obtained an approval of the location of the Scrip, and on the 15th of June, 1869, patents were issued and delivered to such counsel.

At the time these patents were issued, the contest was pending before the Register and Receiver, and undecided by them.

As soon as the General Land-Office was advised of this fact, it requested the attorney for the Scrip claimants to return the patents. He refused to do so, and alleged that the lands had been sold.

The Commissioner of the General Land-Office, upon this state of facts, gave his decision in favor of the Scrip claimants. It is now alleged that he erred in so doing.

The act of July 17, 1854, provided "That no transfer or conveyance of any of said certificates or scrip shall be valid." The instructions of the Commissioner of the General Land-Office, in relation to this Scrip, provided "That the scrip may be located by the reservee in person, or by his or her guardian or duly authorized agent. In all cases the power of guardianship or attorney must be presented with the scrip and application to locate the same; and if on examination the papers are found defective, you will refuse to make said location until they are perfected."

If, therefore, under the law and these instructions, Mr. Gurnee had *duly presented* the Scrip to the local officers, and demanded its location upon these lands, in the absence of a power of attorney or other authority to locate the same, it would have been their official duty to have rejected the application and refused to make the location. But Mr. Gurnee did not *duly present* the Scrip. A presentation at the local office, in the absence of the local officer, and especially at the time this was done, before the usual hours for business, was no legal presentation. The officer was under no obligation to take any official notice of a package of papers found upon his table in the manner these were found. Mr. Gurnee was not misled.

It appears that the young man in the office notified him that he had no authority to receive or file the papers. Mr. Gurnee, if he desired to obtain priority over others, as he doubtless did, should have seen to

it that the papers were presented to the proper officer, and demand made of him. This he did not do. The agent of the State did, and I am of opinion that the State thereby became entitled to the lands. I advise reversal of the decision of the Commissioner, and in view of the fact that patents have already issued inadvertently on the part of the General Land-Office, and under a misapprehension of the facts, I advise that a certificate of approval of the selection be issued to the State.

Such certificate should recite the issuing of the patents, and the facts in relation thereto.

Very respectfully,

WALTER H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by the Secretary, May 25, 1871.

No. 444.

STATE OF CALIFORNIA v. PIKE ET AL.

Location of School Warrants. The location was made by the agent of the State after the expiration of his term.

Held—That he was agent *de facto*, and that his acts were binding, and could not be collaterally impeached by a stranger to the transaction.

Decision by Acting Secretary Cowen, Sept. 26, 1871.

No. 445.

JOHN G. BROWN.

A selection was made by the State of California under the 8th sec. of the act of Sept. 4, 1841, on land withdrawn for railroads. July 5, 1870, the Surveyor General telegraphed to Register to refile applications, and he did, indorsing on the back of the original applications "refiled July 5, 1870."

Held—That this was not a good selection.

Decision by the Secretary, Sept. 18, 1872.

II. ACT OF JULY 23, 1866, WITH INSTRUCTIONS AND RULINGS THEREUNDER.

No. 446.

CHAP. CCXIX.—An Act to quiet Land Titles in California.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in all cases where the State of California has heretofore made selections of any portion of the public domain in part satisfaction of any grant made to said State by any act of Congress, and has disposed of the same to purchasers in good faith under her laws, the lands so selected shall be, and hereby are, confirmed to said State: *Provided,* That no selection made by said State contrary to existing laws shall be confirmed by this act for lands to which any adverse pre-emption, homestead, or other right has, at the date of the passage of this act, been acquired by any settler under

the laws of the United States, or to any lands which have been reserved for naval, military, or Indian purposes by the United States, or to any mineral land, or to any land held or claimed under any valid Mexican or Spanish grant, or to any land which, at the time of the passage of this act, was included within the limits of any city, town, or village, or within the county of San Francisco: *And provided further*, That the State of California shall not receive under this act a greater quantity of land for school or improvement purposes than she is entitled to by law.

SEC. 2. *And be it further enacted*, That where the selections named in section one of this act have been made upon land which has been surveyed by authority of the United States, it shall be the duty of the proper authorities of the State, where the same has not already been done, to notify the register of the United States land-office for the district in which the land is located of such selection, which notice shall be regarded as the date of the State selection, and the Commissioner of the General Land-Office shall, immediately after the passage of this act, instruct the several local registers to forward to the General Land-Office, after investigation and decision, all such selections, which, if found to be in accordance with section one of this act, the Commissioner shall certify over to the State in the usual manner.

SEC. 3. *And be it further enacted*, That where the selections named in section one of this act have been made from lands which have not been surveyed by authority of the United States, but which selections have been surveyed by authority of and under the laws of said State, and the land sold to purchasers in good faith under the laws of the State, such selections shall, from the date of the passage of this act, when marked off and designated in the field, have the same force and effect as pre-emption rights of a settler upon unsurveyed public land; and if, upon survey of such lands by the United States, the lines of the two surveys shall be found not to agree, the selection shall be so changed as to include those legal subdivisions which nearest conform to the identical land included in the State survey and selection. Upon the filing with the register of the proper United States land-office of the township plat in which any such selection of unsurveyed land is located, the holder of the State title shall be allowed the same time to present and prove up his purchase and claim under this act as is allowed pre-emptors under existing laws; and if found in accordance with section one of this act, the land embraced therein shall be certified over to the State by the Commissioner of the General Land-Office.

SEC. 4. *And be it further enacted*, That in all cases where township surveys have been, or shall hereafter be, made under authority of the United States, and the plats thereof approved, it shall be the duty of the Commissioner of the General Land-Office to certify over to the State of California, as swamp and overflowed, all the lands represented as such upon such approved plats, within one year from the passage of this act, or within one year from the return and approval of such township plats. The Commissioner shall direct the United States Surveyor-General for the State of California to examine the segregation maps and surveys of the swamp and overflowed lands made by said State; and where he shall find them to conform to the system of surveys adopted by the United States, he shall construct and approve township plats accordingly, and forward to the General Land-Office for approval: *Provided*, That in segregating large bodies of land, notoriously and obviously swamp and overflowed, it shall not be necessary to subdivide the same, but to run the

exterior lines of such body of land. In case such State surveys are found not to be in accordance with the system of United States surveys, and in such other townships as no survey has been made by the United States, the Commissioner shall direct the surveyor-general to make segregation surveys, upon application to said surveyor-general by the governor of said State, within one year of such application, of all the swamp and overflowed land in such townships, and to report the same to the General Land-office, representing and describing what land was swamp and overflowed under the grant, according to the best evidence he can obtain. If the authorities of said State shall claim as swamp and overflowed any land not represented as such upon the map or in the returns of the surveyors, the character of such land at the date of the grant, September twenty-eight, eighteen hundred and fifty, and the right to the same, shall be determined by testimony, to be taken before the surveyor-general, who shall decide the same, subject to the approval of the Commissioner of the General Land-Office.

SEC. 5. *And be it further enacted*, That it shall be the duty of the Commissioner of the General Land-Office to instruct the officers of the local land-offices and the surveyor-general, immediately after the passage of this act, to forward lists of all selections made by the State referred to in section one of this act, and lists and maps of all swamp and overflowed lands claimed by said State, or surveyed as provided in this act, for final disposition and determination, which final disposition shall be made by the Commissioner of the General Land-Office without delay.

SEC. 6. *And be it further enacted*, That an act entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," approved March third, one thousand eight hundred and fifty-three, shall be construed as giving the State of California the right to select for school purposes other lands in lieu of such sixteenth and thirty-sixth sections as were settled upon prior to survey, reserved for public uses, covered by grants made under Spanish or Mexican authority, or by other private claims, or where such sections would be so covered if the lines of the public surveys were extended over such lands, which shall be determined whenever township lines have been extended over such land, and in case of Spanish or Mexican grants, when the final survey of such grants shall have been made. The surveyor-general for the State of California shall furnish the State authorities with lists of all such sections so covered, as a basis of selection, such selections to be made from surveyed lands, and within the same land district as the section for which the selection is made.

SEC. 7. *And be it further enacted*, That where persons in good faith, and for a valuable consideration, have purchased lands of Mexican grantees or assigns, which grants have subsequently been rejected, or where the lands so purchased have been excluded from the final survey of any Mexican grant, and have used, improved, and continued in the actual possession of the same as according to the lines of their original purchase, and where no valid adverse right or title (except of the United States) exists, such purchasers may purchase the same, after having such lands surveyed under existing laws, at the minimum price established by law, upon first making proof of the facts as required in this section, under regulations to be provided by the Commissioner of the General Land-Office, joint entries being admissible by coterminous proprie-

tors to such an extent as will enable them to adjust their respective boundaries: *Provided*, That the provisions of this section shall not be applicable to the city and county of San Francisco: *Provided*, That the right to purchase herein given shall not extend to lands containing mines of gold, silver, copper, or cinnabar: *Provided*, That whenever it shall be made to appear by petition from the occupants of such land that injury to permanent improvements would result from running the lines of the public surveys through such permanent improvements, the Commissioner of the General Land-Office may recognize existing lines of subdivisions.

SEC. 8. *And be it further enacted*, That in all cases where a claim to land by virtue of a right or title derived from the Spanish or Mexican authorities has been finally confirmed, and a survey and plat thereof shall not have been requested within ten months from the passage of this act, as provided by sections six and seven of the act of July first, eighteen hundred and sixty-four, "To expedite the settlement of titles to lands in the State of California," and in all cases where a like claim shall hereafter be finally confirmed, and a survey and plat thereof shall not be requested, as provided by said sections, within ten months after the passage of this act, or any final confirmation hereafter made, it shall be the duty of the surveyor-general of the United States for California, as soon as practicable after the expiration of ten months from the passage of this act, or such final confirmation hereafter made, to cause the lines of the public surveys to be extended over such land, and he shall set off, in full satisfaction of such grant, and according to the lines of the public surveys, the quantity of land confirmed in such final decree, and as nearly as can be done in accordance with such decree; and all the land not included in such grant as so set off shall be subject to the general land laws of the United States: *Provided*, That nothing in this act shall be construed so as in any manner to interfere with the right of bona fide pre-emption claimants.

SEC. 9. *And be it further enacted*, That from the decrees of the district courts of the United States for the district of California, approving or correcting the surveys of private land claims under Spanish or Mexican grants rendered after the first day of July, one thousand eight hundred and sixty-five, an appeal shall be allowed for the period of one year after the entry of such decrees to the circuit court of the United States for California, as provided by section three of the act of July first, one thousand eight hundred and sixty-four, to expedite the settlement of titles to land in the State of California, and the decision of the circuit court shall be final: *Provided, however*, That from decrees of the district courts, as aforesaid, made after July one, eighteen hundred and sixty-five, and prior to the passage of this act, an appeal may be taken to the United States circuit court for the State of California within one year from the approval of this act.

Approved, July 23, 1866. (Stat. 14, page 213, Revised Statutes, Sections 2485 to 8.)

No. 447.

INSTRUCTIONS

Under the act of July 23, 1866, to quiet land titles in California.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE.

September 13, 1866.

REGISTER AND RECEIVER, *San Francisco, California.*

GENTLEMEN:—Annexed is an act of Congress, approved July 23d, 1866, to quiet land titles in California.

The first section confirms the title to the State in any public lands which California has heretofore selected, under any grant by act of Congress, where the State has disposed of the same to purchasers in good faith under her laws, with the following exceptions: Lands to which a valid adverse homestead, pre-emption or other right shall have been acquired at the date of the act under the laws of the United States; or any lands which have been reserved for naval, military or Indian purposes, or any mineral lands; or any lands held or claimed under any valid Mexican or Spanish grant; or lands included at the date of the act within the limits of any city, town or village, or within the county of San Francisco; restricting such selections to the quantity allowed by law for school or improvement purposes.

The 2d section required the State authorities to give notice, where it has not been done, to the Register of the proper Land-Office, of all selections named in section one of the act, where the lands have been surveyed by the United States at the passage of the act, such notice to be treated as the date of the State selection. Thereupon, after due examination and testing the same with your records, you will *promptly* certify and transmit said list to this office for final action in way of investing the State with title. You will of course also transmit, after proper examination, any and all other lists as may have been duly filed before the passage of said act.

The 3d section provides that where the selections in the 1st section of the act are on lands not surveyed by the United States at the passage of the act, but which have been surveyed and marked off in the field by State authority and sold to purchasers in good faith under the State laws, the selections shall have the force and effect of a pre-emption right, and upon the survey of such lands by the United States, the selection must be made to conform to the legal subdivisions.

Upon filing with the Register the township plat of survey including such selections, the holder of the State title shall be allowed the same time to present and prove up his purchase and claim, as is allowed to pre-emptors under existing laws, and if such selections shall be found in accordance with 1st section of the act, lands of this class shall be certified over to the State by the Commissioner of the General Land-Office. You will take care promptly to adjudicate and report all claims which may be established under this statutory provision.

The 4th, 5th, and 8th sections, and a portion of the 6th section of the act relate to swamp, school selections, Spanish and Mexican claims, which form the subject of a special letter of this date, copy herewith to the Surveyor General.

Referring to the sixth section of the act, in regard to selections in lieu of 16th and 36th sections or portions thereof not granted in place, I have to advise you that the circular bearing date 21st August, 1862,

from this Office to all California Land-Offices, is hereby so far modified as to permit the indemnity selections to be made within the same land districts in which the deficiencies occur. Further, that the instructions in section seven of said circular, also in Note 2 of the form for indemnity school selections, transmitted to you with letter dated March 2, 1866, are so far rescinded as to allow selections in cases where townships are covered wholly or in part by a private claim.

In ascertaining from the plats the full proportional amount of school land to which any township is entitled, you will hereafter include the area of private claims with the area of public lands in calculating the superficial contents of the township, and the proportional amount of school land to which such township is entitled.

The form transmitted March 2, 1866, will be used in making this class of selections, yet subject to the modification hereinbefore mentioned.

Section 7 allows persons who purchased in good faith and for valuable consideration lands of Mexican grantees, where the grants have been rejected, or where the lands so purchased have been excluded from the final survey of such grant, to purchase the same from the United States, after the survey of such lands under existing laws at the minimum price established by law, upon making satisfactory proof before the Register and Receiver, as to their original purchase before-mentioned, and that they have used, improved and continued in actual possession of the same; provided, that no valid adverse right or title exist to the same; and provided further, that the right above mentioned shall not extend to lands in the city or county of San Francisco, nor to lands containing mines of gold, silver, copper, or cinnabar.

If it shall be made to appear by showing from the above class of claimants that injury would result to permanent improvements from running the lines of public survey through such improvements, the Commissioner of the General Land-Office is authorized to recognize existing lines of subdivision.

In adjudicating and reporting upon any claims coming within this provision, you will take care in all cases to obtain from the Surveyor-General a connected plat exhibiting the exact out-boundaries of such rejected claim, so that when the cases come up for revision at the Department, the fact may clearly appear in every case that the tracts claimed are within the actual limits of such rejected claim.

The 9th and last section makes provision for appeals from decrees of United States District to the Circuit Court, in reference to Spanish or Mexican grants, rendered after the first day of July, 1865, as provided for by section three of the act of July 1, 1864, provisions you will of course take notice of in acting upon any matter connected with such interests; yet the stipulations there made are to be more immediately kept in view by the United States Surveyor-General, in acting upon such cases in regard to applications for the return of surveys as the basis of patents.

A copy of these instructions will be sent to the Surveyor-General.

Very respectfully, your ob't serv't,

JOS. S. WILSON, *Commissioner.*

No. 448.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

March 18, 1870.

GENTLEMEN:—In reply to Register's letter of 11th ultimo, I inclose herewith a copy of instructions to the district office at San Francisco, dated September 13, 1866, under the act of July 23, 1866, "to quiet land titles in California."

As respects "coterminous proprietors," whose right of "joint entry" is admissible in certain cases, under the act of 1866, I have to state that the proofs must be made separately, and individually, as in other claims, and the question of "coterminous proprietorship" is one of fact, to be drawn from the nature and character of the respective claims, which, when clearly determined by the register and receiver, will serve as a basis for your action, admitting the joint entry when the showing is clear, and rejecting it when the respective rights of the claimants can be separately adjusted and secured. In all cases a full report of your action is desired.

Very respectfully,

JOS. S. WILSON, *Commissioner.*REGISTER AND RECEIVER, *Los Angeles, California.*DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

September 13, 1866.

SIR:—I have to draw your special attention to the provisions of the eighth and ninth sections of the act of Congress approved July 23, 1866, a copy of which accompanies other instructions to you of this date.

The eighth section contemplates two classes of cases, viz:

1st. Claims derived from Spanish or Mexican authorities which were finally confirmed at the passage of the act of July 23, 1866.

2d. Claims of the same kind which may be confirmed after the passage of the act.

Where parties may present their applications within ten months from the date of said act of July 23, 1866, for survey and plat in cases heretofore finally confirmed, you will of course cause the same to be duly surveyed according to the sixth and seventh sections of the act of July 1, 1864. (Stats., vol. 13, p. 334.) And so in like manner you will deal with such finally confirmed claims when application may be made within ten months next succeeding the act of final confirmation, and in either class of cases make the approved returns of survey which are required by law as the bases of patents.

When, however, in any case falling within the above-mentioned classes the requisite application is not made within the period of limitation fixed in this statute, the law makes it your duty, thereafter to extend the lines of the public surveys over such claims, and to "set off in full satisfaction of such grants, and according to the lines of the public surveys, the quantity of land confirmed in such final decree, and as nearly as can be done in accordance with such decree," taking care to observe the provision in this section as to non-interference "with the right of *bona fide* pre-emption claimants."

You will immediately ascertain in what claims of the first class surveys have not been applied for, and cause notice to be promptly served

upon the parties interested, of the requirements of the law, which it is your duty to carry out. And in like manner you will timely bring to the notice of parties where claims may hereafter be finally confirmed, the stipulation of the statute fixing a limitation as to time within which confirmees must apply for a specific survey, in default whereof the location must be adjusted according to the lines of the public surveys.

The ninth section provides for appeals to the circuit court from the decision of the United States district court, approving or correcting survey.

You will be careful in making your final returns for patenting, to show in your certificates whether the survey has been finally acted upon by the United States Supreme Court or the circuit court, and if appeal has not been taken from the decree of the district court, and the period for appeal has expired, you will send up with your returns of survey, as the basis of patent, a certificate from the clerk of the proper court, showing that the decree of confirmation has become final and absolute, no appeal having been taken within the limitation fixed by the statute. You are requested to acknowledge the receipt of these instructions.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner*.

L. UPSON, Esq., *U. S. Surveyor General, San Francisco, Cal.*

No. 449.

SWAMP LANDS OF CALIFORNIA.

Held—That the act of July 23, 1866, 14 Stat., 219, was a remedial statute and should be construed liberally. Sedg. Cons. & Stat. 359. Dwarries 632. Tracy v. Card, 2 Ohio State, 431. Gellit v. Moody, 3 Coms. 479. 8 Mary'd, 88. 17 Wend, 285.

That the proviso in the 1st section also applied to cases mentioned in the 4th section.

That the selections referred to in the 1st, 2d and 3d sections were those that had been made by the State and sold to *bona fide* purchasers, under State authority.

That the system of surveys adopted by the United States meant those made on the rectangular system.

That the lands segregated by the State of California, as swamp lands, prior to July 23, 1866, and as to which there was no adverse claim, were confirmed to the State by the act of July 23, 1866, in all townships which had been surveyed by the United States prior to that date, and in none other.

That the Surveyor General of California, in the examination of segregation surveys made by the State on the rectangular system, and in Townships that had been surveyed by the United States prior to July 23, 1866, should not take into consideration the quality of the land embraced in such surveys. He is requested to treat them as swamp, whether they are or not.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, D. C., December 5, 1871.

SIR:—I have considered the subject submitted for my opinion, and relating to the proper answer to be given to the inquiries made by the Commissioner of the General Land-Office, in his letter of August 16, 1871. The letter states the case plainly, and is as follows:

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., August 16, 1871.

SIR:—A question has been raised as to the meaning and proper con-

struction of that part of the fourth section of "An act to quiet land titles in California," approved July 23, 1866, United States Statutes, volume 14, page 219, which provides: "The Commissioner shall direct the United States Surveyor-General for the State of California to examine the segregation maps and surveys of the swamp and overflowed lands made by said State, and when he shall find them to conform to the system of surveys adopted by the United States, he shall construct and approve township maps accordingly and forward to the General Land-Office for approval."

The agent of the State claims that unless valid adverse rights had attached prior to July 23, 1866, it is absolutely entitled to all the lands embraced within its segregation surveys, where they conform to the ordinary rectangular system of surveys adopted by the United States, and that the Surveyor-General cannot, in the examination of the segregation maps and surveys made by the State, and the construction of township plats, take into consideration the character of the lands, but that his examination is solely for the purpose of determining whether such segregation surveys agree with the rectangular system of surveys adopted by the United States; and that in all cases where he finds such agreement he must construct and approve township plats, and that the lands must be listed to the State regardless of quality or character, and whether they are shown to be swamp and overflowed or not by the United States surveys.

On the other hand it is contended by Senator Stewart, of Nevada, who was in the Senate at the time of the passage of the act of July 23, 1866, and others, that the swampy character of the land must not only be established by both surveys, but that there must be an exact agreement of segregation lines made by the State and the United States, in order to authorize the Surveyor-General to construct and return township plats, or to entitle the State to have the lands listed and approved.

The magnitude of the interests involved makes it desirable that the proceedings of the Surveyor-General in the examination of the segregation maps and surveys of the State, and the construction of township plats, and of this office in approving lists of swamp lands to the State of California, should be strictly legal; and I therefore respectfully submit the following questions for your consideration, and request an advisory opinion or decision thereon at as early a date as practicable.

First. Do the words "system of surveys" adopted by the United States, as used in the foregoing quotation from section 4, act of July 23, 1866, refer to or mean the ordinary rectangular system of surveys adopted by the United States and embodied in a work published by the General Land-Office, entitled a "Manual of Surveying Instructions," and made a part of each contract for surveying by the second section of an act of Congress approved May 30, 1862, entitled "An act to reduce the expenses of the survey and sale of the public lands of the United States?" (United States Statutes, vol. 12, page 409.)

Second. If such words refer to such rectangular system of surveys, are the lands segregated by the State of California prior to July 23, 1866—where the surveys conform to such system—confirmed to the State of California by said act of July 23, 1866?

Third. If the lands embraced within such segregation surveys are so confirmed, can the Surveyor-General, in the examination of the segregation maps and surveys of the State, and the construction of town

ship plats, take into consideration the quality of the lands embraced in the segregation surveys, and exclude from his township plats lands which have been, in his opinion, incorrectly or improperly segregated as swamp and overflowed by the State of California?

I have the honor to be, very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

HON: COLUMBUS DELANO, *Secretary of the Interior*.

The questions propounded require an examination of the act referred to. It is entitled "An act to quiet land titles in California," and is remedial in its character. To interpret it properly it will be necessary to examine the evil which it was intended to remedy.

It is well known that prior to its passage there was very great confusion and uncertainty in regard to land titles in that State.

Congress had made to it school, school indemnity, university, internal improvement, and swamp land grants. The Mexican government, before the treaty of Gaudalupe Hidalgo, had made many grants to private individuals. The State had made selections under her grants. In many cases these selections were against law, and the lands selected were disposed of by the State. For example, the law required that school indemnity and university grants should be approved by the Secretary of the Interior before they became valid, and yet the State had made selections and disposed of them without such approval. The swamp-land grant gave to the State only such wet and overflowed land as had been surveyed, and yet the State had made selections and sales of swamp lands that had never been surveyed. It had selected, as swamp, lands which the United States authorities claimed were not swamp, and that were, in fact, dry.

In 1861 it passed a law creating a board of commissioners to select the land claimed to be swamp, and cause them to be surveyed into sections and parts of sections, and make maps of the same, one of which was to be forwarded to the Land-Office in Washington.

It did make the selections and maps, and did forward them to Washington. It had in some cases authorized surveys of lands claimed to be swamp, under the geodetic system of survey—a system unknown to the United States laws, and when referred to at all as "what is known as the *geodetic method*." (Sec. 4, 10 Stat., 245.)

Some townships had been surveyed by the United States; others had not. None of the United States surveys made and approved prior to July 23, 1866, divided the swamp lands into legal subdivisions, or gave them specific areas. They merely indicated them in bulk.

Of private land claims some were in litigation, others were rejected by the courts. When rejected, what should be done with the lands claimed?

Should they be treated as public lands, and open to pre-emption and to homestead entries to all, or should the private land claimants be allowed in any case to enter them; and if so, in what?

These and like matters were involved in uncertainty. This was acknowledged by all parties, State and national.

Governor Low, in his message to the legislature of December 4, 1865, said: "In the almost inextricable state of confusion to which our land matters have been brought, the settlement of these points of difference between the United States and the State, so as to secure to California and the people who have purchased lands of her their just rights, does

not seem clear. * * * Our only remedy lies in future legislation by Congress to validate what is now invalid in the sales already made, and settle all conflicting opinions regarding the rights of the State under the various acts of Congress making donations of land."

The Hon. J. M. Edmunds, Commissioner of the General Land-Office, in his letter to the chairman of the Senate Committee on Public Lands, transmitting the bill afterward passed and now under consideration, said: "As the bill now stands, this office, after a thorough examination of its provisions, and impressed with the *absolute necessity* of enactment of some measure in order to relieve the State and our people from the *insufferable evils of uncertainty of titles*, has no hesitation in recommending, and accordingly hereby recommends its passage."

Under this state of fact the act of July 23, 1866, was passed for the purpose of removing uncertainty and quieting land titles in California.

Congress had long before, and in 1796, adopted a system of surveying the public lands. (1 Stat., 466.) This system provided that they should be "divided by north and south lines run according to the true meridian, and by others crossing them at right angles, so as to form townships of six miles square, unless where the line of the late Indian purchase, or of tracts of land heretofore surveyed or patented, or the course of navigable rivers may render it impracticable; then this rule shall be departed from no further than such particular circumstances may require. The corners of the townships shall be marked with progressive numbers from the beginning; each distance of a mile between the said corners shall be also distinctly marked with marks different from those of the corners. One-half of the said townships, taking them alternately, shall be subdivided into sections containing, as nearly as may be, six hundred and forty acres each, by running through the same, each way, parallel lines at the end of every two miles, and by making a corner on each of said lines at the end of every mile; the sections shall be numbered respectively, beginning with the number one in the north-east section, and proceeding west and east, alternately, through the township, with progressive numbers, till the thirty-sixth be completed," etc., etc.

The system thus prescribed was incorporated into a manual called a "Manual of Surveying Instruction," and was required to be made a part of every contract for surveying public lands by the second section of the act of May 30, 1862. (12 Stat., 409.) With this preliminary statement of fact and of law, I proceed to consider the act in question.

Counsel for the parties have filed able and very elaborate arguments maintaining their respective views as to its meaning.

They differ widely in their construction of it. I have given attention to their arguments, and have arrived at conclusions which are satisfactory to my own mind. In stating them I shall not confine myself strictly to answering the questions propounded by the Commissioner. The first inquiry that naturally arises is, what rule of interpretation is applicable to this act?

Is it a remedial statute, and therefore to be construed "largely and beneficially;" or is it a statute making a legislative grant, and therefore to be construed strictly, and, in cases of doubt as to what was intended, to be so construed as to restrict and limit the grant rather than to extend it?

In my opinion it is a remedial statute, intended to help out defects

and difficulties in grants already made, and should be construed liberally, and so as to accomplish the end had in view, that of settling and quieting land titles in California. (Dwarris, 632; Sedg. Stat. and Cons. Law, 359; *Tracy v. Cord*, 2 Ohio Stat., 431; Gillet & Moody, 3 Coms., 479; *State v. Jones*, 8 Maryland, 88; *Mayor v. Lord*, 17 Wend., 285.)

The first section provides: "That in all cases where the State of California has made selections of any portion of the public domain in part satisfaction of any grant made to said State by any act of Congress, and has disposed of the same to purchasers in good faith under her laws, the lands so selected shall be, and hereby are, confirmed to said State: *Provided*, That no selection made by said State *contrary to existing laws* shall be confirmed *by this act*, for lands to which any adverse pre-emption, homestead, or other right, has at the date of the passage of this act been acquired by any settler under the laws of the United States," etc.

There is no controversy as to the first clause of this section. It is conceded by all parties to confirm all selections of public lands, made under any congressional grant, where the lands thus selected have been sold or disposed of under State laws to *bona fide* purchasers, no matter whether the selections were regular or irregular, authorized or unauthorized by law. There is, however, a controversy as to the proviso. The State claims that it is not only applicable to cases of selections of lands which have been sold to *bona fide* purchasers, but also to the second clause of the fourth section, which requires the Commissioner to "direct the United States Surveyor General for the State of California to examine the segregation maps and surveys of the swamp and overflowed lands made by said State, and when he shall find them to conform to the system of surveys adopted by the United States, he shall construct and approve township plats accordingly, and forward to the General Land-Office for approval."

The other parties claim that the proviso does not apply to this portion of said fourth section. I am of opinion that it does apply. The proviso so states. It says that "no selection made by said State, *contrary to existing laws*, shall be confirmed *by this act*, to which any adverse pre-emption," &c., has attached. If it had been the intention to limit it to the cases stated in the first section, it would have used apt words, limiting it to that section. (See proviso at the end of the eighth section.)

The debates show that this was the construction that the law-makers gave to the language used.

Mr. Hendricks (Congressional Globe, part 4, p. 3080, Thirty-ninth Congress, first session,) said:

"I certainly should not vote to confirm a title irregularly obtained through the State of California as against a rightful settler, but I think the proviso of the first section sufficiently protects that class of persons, and that was the opinion of the committee. It was unfortunate that the State of California established a surveying system of her own—very unfortunate that she sold certificates to be located by the purchaser at his election, in any part of the State; but it has become a part of the history of the lands of that State, and we must relieve the embarrassment in regard to their titles.

"Mr. Conness. I desire to say, that it may go upon the record, that I would not vote to confirm to the State of California, or to any of her

people, an acre of land which was settled on by a man who had undertaken to make his home there."

The second section relates, by its terms, to selections named in the first section, which had been made upon land surveyed by authority of the United States, and provides that the State authorities, where it had not already been done, should notify the register of the United States Land-Office for the district where the land was located of "such selection," which notice should be regarded as the date of the State selection. It required the Commissioner of the General Land-Office immediately to instruct the several local registers to forward to that Office, after investigation and decision, "*all such selections*," and if the Commissioner found them such as were described in the first section, he was required to certify them over to the State in the usual manner.

The selections, and the only selections referred to in this section, are those made and disposed of by the State under her laws to *bona fide* purchasers. If they had not been disposed of by the State to *bona fide* purchasers, they were not to be reported to the registers, nor investigated or decided by them.

The third section provides that where "selections named in section one of this act had been made from lands which had not been surveyed by authority of the United States, but which selections had been surveyed by authority of and under the laws of California, and the lands sold to purchasers in good faith under the laws of the State, that such selections should, after the date of the passage of this act, when marked off and designated in the field, have the same force and effect as the pre-emption right of a settler upon unsurveyed public land; and if, upon survey of such land by the United States, "*the lines of the two surveys shall be found not to agree*, the selections shall be so changed as to include those legal subdivisions which nearest conform to the identical land included in the State survey and selections."

It further provides that the holder of such State title on land not surveyed by the United States should have such time (one year) to prove up his purchase and claim, after the township plats of United States survey had been filed with the register, as was allowed to pre-emptors under existing laws, and if such selection were found by the Commissioner of the General Land-Office to be in accordance with said section one, he was required to certify it over to the State.

It will be observed that each and all of these three sections relate to such selections as are described in the first section, and that is to those where the lands have been disposed of to purchasers in good faith under State laws, and to no other selections whatever.

The fourth section is the first one that treats of selections or claims which have not been disposed of, under State laws, to *bona fide* purchasers.

This section introduces new subjects, and is the one about which there is great controversy. It may very properly be divided into three clauses.

1st. That in all cases where township surveys have been made, or shall hereafter be made, under authority of the United States, and the plats thereof approved, it shall be the duty of the Commissioner of the General Land-Office to certify over to the State of California, as swamp and overflowed, all the lands represented as such upon such approved plats within one year from the passage of this act, or within one year from the return and approval of such township plats.

This gives to the State all lands that are represented as swamp on the approved United States surveys and plats that have been made, or shall thereafter be made, and requires the Commissioner to certify them over to the State.

2d. The Commissioner shall direct the United States surveyor general for the State of California to examine the segregation maps and surveys of the swamp and overflowed lands made by said State; and where he shall find them to conform to the system of surveys adopted by the United States he shall construct and approve township plats accordingly, and forward to the General Land-Office for approval; provided, that in segregating large bodies of land, notoriously and obviously swamp and overflowed, it shall not be necessary to subdivide the same, but to run the exterior lines of such body of land. In case such State surveys are found not to be in accordance with the system of United States surveys, and in such other townships as no survey has been made by the United States, the Commissioner shall direct the surveyor general to make segregation surveys upon application to said surveyor general by the governor of said State, within one year of such application, of all the swamp and overflowed lands in such townships, and to report the same to the General Land-Office, representing and describing what land was swamp and overflowed under the grant, according to the best evidence he can obtain.

The first inquiry that arises upon this clause is, what is the true meaning of the phrase, "system of surveys adopted by the United States?"

Does it mean, as claimed by some of the counsel, such surveys as the surveyor general shall find to conform to "his own surveys;" such surveys as shall exactly agree in segregation lines with the United States surveys, or such surveys as conform to the rectangular system of surveys which, as we have heretofore seen, had been prescribed by the United States statute?

There were in California, at the time of the passage of this act, two systems of surveying, both of which were, in certain cases, authorized by her legislation.

The one system was the geodetic, which made use of such irregular lines and angles as were necessary to survey tracts that were irregular in their boundaries.

The other was the rectangular system, which required the tracts to be surveyed into legal subdivisions of sections and parts of sections, and all the angles to be right angles.

One of these systems was unknown to the United States laws. The other was the system prescribed by them. Both had been more or less used by the State in segregating swamp lands claimed by her. Upon this state of fact, is there any reasonable ground to doubt what Congress meant by the "system of surveys adopted by the United States?" In my opinion it meant the rectangular system, and intended to require the United States surveyor general for the State of California to examine the State maps and surveys of swamp lands, and when he found them to conform to the rectangular system of surveys adopted by the United States, he was directed to construct and approve township maps accordingly.

The object of the statute was to make an end of controversy, and to accomplish that result it became necessary to fix upon some rule that should be final. What rule that should be was the subject of legisla-

tive discretion. In the exercise of that discretion Congress determined that the fact of conformity to the rectangular system should be the test.

It may have come to this conclusion from the fact that the State surveys were the only ones that sectionized the swamp lands, and therefore furnished a speedy and simple test of what was swamp.

It will be observed that the language of the fourth section differs materially from that in the third. In the latter it is expressly provided that "if, upon survey of such lands by the United States, *the lines of the two surveys shall be found not to agree*, the selection shall be changed," etc. If the law-makers intended by this fourth section to require an agreement in segregation lines between the State and United States surveys, why did they not employ language similar to that used in the third section, which so clearly expressed that idea? The only reasonable answer that I can give is, that they did not mean the same thing in the two sections.

If the first sentence in the second clause stood alone, it would confirm all selections when the maps and surveys of the State had been made on the rectangular system, and to which there is no adverse claim. But it does not. It is qualified by what follows. If one of two things were true, if the surveys were found to be not in accordance with the rectangular system, or if there had been no United States survey of the township, then there was no confirmation of the swamp-land selections, but the Commissioner was required to direct the surveyor general to make segregation surveys, upon application to him by the governor, within one year of the application, and to report the same to the General Land-Office, and to represent and describe what land was swamp and overflowed, according to the best evidence he could obtain. In other words, in all cases where the State surveys were not upon the rectangular system, and in all cases where there had been no United States survey, the whole question as to what was swamp land was an open one, to be determined according to the actual facts in the case, by the surveyor general, and upon the best evidence he could obtain.

3d. "If the authorities of said State shall claim as swamp and overflowed any land not represented as such upon the map or in returns of the surveyors, the character of such land at the date of the grant, September 28, 1850, and the right to the same, shall be determined by testimony to be taken before the surveyor general, who shall decide the same, subject to the approval of the Commissioner of the General Land-Office."

This privilege given to the State I understand to be limited to surveys made in those townships where the geodetic system had been adopted, and to those where there had been no United States survey prior to the passage of the act.

In such cases the State was not concluded by the judgment of the surveyor general in making swamp-land segregations, but was given the right to introduce testimony before him upon the character of the land, and he was to determine the question, subject to the approval of the Commissioner of the General Land-Office.

In my judgment, this fourth section is confirmatory. It is argued that it is not, because the word confirm is used in the first section, and is not used in this. That is true, but words that are equivalent to it are used.

Under the land laws the making of a township plat by the surveyor general or his deputy, and the approval of it by the surveyor general

and Commissioner of the General Land-Office, is a *final* confirmation of such plat, and the swamp lands shown by such plat are always treated as swamp, and listed to the State.

This well-understood rule is recognized in this section, and instead of saying that the township plats found to conform to the system of surveys adopted by the United States shall be *confirmed*, it provides that the Commissioner shall direct the surveyor general to examine them, and when he finds them to conform to the said system he is required to approve.

It thus becomes the official duty of the Commissioner and surveyor general to approve the plats, and when that is done, it is, to all intents and purposes, a confirmation of the same. It is a *finality*.

The fifth section required the Commissioner to instruct the local officers, immediately after the passage of the act, to forward their lists of all selections made by the State under the first section, and the surveyor general to forward maps of all swamp lands claimed by the State, which he should find had been surveyed by the State in accordance with the rectangular system in townships already surveyed by the United States, and also all maps of swamp land claimed by the State, which he should himself survey in those townships where the State survey had not been upon the rectangular system, or where there had been no United States survey. It also required the Commissioner to act upon all these matters without delay.

The construction which I have given to this law was the one adopted by the Commissioner of the General Land-Office soon after the act was passed, and embodied in the official instructions issued by him on the 13th of September, 1866.

In accordance with the foregoing construction, I think the answer to the questions propounded by the Commissioner should be as follows:

First. The words "system of surveys adopted by the United States," as used in said section 4, do mean the ordinary rectangular system of surveys adopted by the United States, and embodied in the manual referred to.

Second. The lands segregated by the State of California prior to July 23, 1866, by surveys in conformity with such rectangular system, and to which there was no adverse claim, were confirmed to the State by the act of July 23, 1866, in all townships which had been surveyed by the United States prior to that date, and in none other.

Third. The surveyor general, in the examination of segregation surveys made by the State on the rectangular system, and in townships that had been surveyed by the United States prior to July 23, 1866, and in constructing township plats of such surveys, should not take into consideration the quality of the land embraced in such segregation surveys.

He is required to treat them as swamp and overflowed, whether they are so in fact or not.

Very respectfully,

W. H. SMITH, *Assistant Attorney General*.

HON. C. DELANO, *Secretary of Interior*.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., December 5, 1871.

SIR:—I have carefully considered the questions presented in your

letter of the 16th of August last in regard to the construction of the act of Congress "to quiet land-titles in California," approved 23d of July, 1866, (14 Stat., 218,) and have arrived at the following conclusions:

1. That the first three sections of said act relate to lands which have been disposed of by the State to purchasers in good faith under her laws; and confirm to the State all such selections, except in the cases named in the proviso to the first section.

2. That the fourth section secures to the State, as swamp and overflowed, all lands that are represented as swamp on the approved plats of United States surveys that had been made prior to 23d July, 1866, or that should thereafter be made, and required all such lands to be certified over to the State in all cases where there was no adverse claim.

That said section required the United States surveyor general for the State of California to examine the segregation maps and surveys of swamp lands made by said State, and when he should find such maps in townships which had been surveyed by the United States prior to 23d July, 1866, to conform to the rectangular system of surveys prescribed by the United States, he was required to construct and approve township plats in accordance with such State surveys; that the practical result of such approval was to secure to the State all the lands represented as swamp on such State segregation maps and surveys, as to which there was no adverse claim.

That in all townships where the State surveys do not conform to the rectangular system, and in all townships which had not been surveyed by the United States prior to 23d July, 1866, the surveyor general was required to make segregation surveys of swamp lands, upon application made to him by the governor of the State and within one year from such application, and to report the same to the General Land-Office; that in making these surveys he was to be governed by the best evidence he could obtain, and the State, if not satisfied with them, had the right to introduce testimony before the surveyor general, and to appeal from his decision to the Commissioner of the General Land-Office.

That the surveyor general, in the examination of segregation maps which he should find conformed to the rectangular system in townships which had been surveyed by the United States prior to July 23, 1866, and as to which there was no adverse claim, should not take into consideration the quality of the land embraced in such segregation surveys, but should treat them as swamp, whether they were so in fact or not.

You will take all necessary steps to carry the foregoing views into execution.

I transmit herewith an opinion on this subject prepared by Hon. Walter H. Smith, assistant attorney general. In the conclusions arrived at by Mr. Smith I fully concur, as I do generally in the reasons which he assigns for such conclusions.

I also transmit for your files numerous arguments and papers filed by attorneys of parties in interest since the matter was brought to my attention.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 450.

H. H. BUHNE.

Application to have tract certified to the State of California under the acts of March 3, 1853, 12th Sec., (10, Stat., 248,) and July 23, 1866, 1st Sec. (14 Stat., 218.)

Land was selected by State agent, 16th June, 1860, approved by Register and reported to General Land-Office. List filed and tract entered upon the books as located.

The State patented the land to Wm. Broderson, January 17, 1861, who sold April 7, 1862, to claimant for \$5,000. April 23, 1867, Light House Board requested the Commissioner to reserve same for the use of the government. May 23, 1867, the Secretary of the Interior declined to approve the selection. May 28, 1867, Commissioner ordered reservation for Light House purposes.

Claimant had no notice of the proceedings.

Held—That he was not bound by them, and that the present Secretary had the right to review the decisions of his predecessor when called upon by a person who was not a party to the former proceeding, and that title was confirmed in the claimant by the 1st Sec. of the act of July 23, 1866.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, Nov. 3, 1871.

SIR:—I have examined the application of H. H. Buhne, claimant to lot 1 of Sec. 28, and S. $\frac{1}{2}$ of N. W. $\frac{1}{4}$, and N. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Sec. 27, T. 1 N., R. 3 W., Humboldt, California, which comes before the Department upon petition of said applicant, asking that the tract be certified to the State of California, under the 12th section of the act of March 3, 1853, (10 Stat., 248,) and the 1st section of the act of July 23, 1866. (14 Stat., 218.)

Section 12 of the act of March 3, 1853, reads as follows:

"Be it further enacted: That the quantity of two entire townships, or seventy-two sections, shall be, and the same is hereby granted to the State of California for the use of a seminary of learning, said lands to be selected by the Governor of the State, or any person he may designate for that purpose, in legal subdivisions of not less than a quarter section of any of the unsold, unoccupied, and unappropriated public lands therein, subject to the approval of the Secretary of the Interior, and to be disposed of as the Legislature shall direct. *Provided,* however, that no mineral lands, or lands reserved for any public purpose whatever, or lands to which any settler may be entitled under the provisions of this act, shall be subject to such selections."

Section 1 of the act of July 23, 1866, is as follows:

"Be it enacted, etc., That in all cases where the State of California has heretofore made selections of any portion of the public domain in part satisfaction of any grant made to said State by any act of Congress, and has disposed of the same to purchasers in good faith under her laws, the lands so selected shall be, and hereby are confirmed to said State: *Provided,* That no selection made by said State contrary to existing laws, shall be confirmed by this act for land to which any adverse pre-emption, homestead or other right has, at the date of the passage of this act, been acquired by any settler under the laws of the United States, or to any lands which have been reserved for naval, military or Indian purposes by the United States, or to any mineral lands, or to any land held or claimed under any valid Mexican or Spanish grant, or to any land which, at the time of the passage of this act, was included within the limits of any city, town or village, or

within the county of San Francisco. *And provided further*, That the State of California shall not receive under this act a greater quantity of land for school and improvement purposes than she is entitled to by law."

The facts as shown in the record are as follows:

On the 16th day of June, 1860, the duly authorized agent of the State selected the land in controversy in part satisfaction of the grant made by the twelfth section of the act of 1853. The selection was approved by the Register at Humboldt, who reported it to the General Land-Office. The list containing it was filed, and the tract entered upon the books as located. On the 17th day of January, 1861, the State patented the land to Wm. Broderson, who on the 7th day of April, 1862, sold the same to the claimant, receiving in consideration therefor five thousand dollars. April 23, 1867, the Light House Board requested the Commissioner to reserve, for the use of the Government in the construction of a light house, all the lands so selected except lot 2. The Commissioner submitted this request to the Secretary, who on the 23d of May, 1867, replied as follows: "Inasmuch as the selection of the lands is by the act subject to the approval of the Secretary of the Interior, I decline approving the selection by the State of said portions, and enclose herewith the President's order for the reservation of the same for light house purposes." The reservation was accordingly ordered by the Commissioner May 28, 1867. On the 19th of September, 1870, Buhne wrote to the President, stating the facts. His letter was referred to the Commissioner, who, January 19, 1871, informed the Register and Receiver that the case was originally disposed of by the Secretary of the Interior in the manner indicated above, and that the tract was thereupon appropriated for the light house as vacant public lands. Buhne, considering this letter as a decision of the case, gave notice of appeal from it to the Secretary. The Commissioner refused to entertain an appeal, on the ground that his letter was not a decision, but a letter of instruction to the Register and Receiver, setting forth a decision of the Secretary.

The case finally came before the Department upon an application of counsel for Buhne, for an order directing that the tract be certified to the State under the two acts quoted above.

It is argued in this application that the proceedings before the Secretary, resulting in his letter to the Commissioner of May 23, 1867, were entirely *ex parte*, Buhne having had no notice or chance to defend, and that such decision was made without consideration of the first section of the act of 1866, which it is claimed had already confirmed the selection to the State.

The case presents two questions, one that of jurisdiction, and the other involving a construction of the act of 1866.

The first, being that of jurisdiction, or the question whether the Secretary has the power to review a case once passed upon by the Department, is easily determined, as it is presented in this case. The record shows that the former proceeding before the Secretary was entirely *ex parte*. It does not, therefore, take away the jurisdiction of the Department to examine into and decide the claim of a person interested, who was not a party to such proceedings.

With reference to the second question, involving a consideration of the act of 1866, I am of opinion that the first section of said act supplied the one link necessary to complete a claim of title in the State. It is

admitted that the land was of a class subject to selection, that the location was regular, and that on the 23d of July, 1866, it only required the approval of the Secretary to vest a complete and perfect title in the State. The act of 1866, which is entitled "An act to quiet land titles in California," provided that the selection should be, and thereby was confirmed. This, by its repugnancy to the clause of the prior act requiring an approval by the Secretary, repealed such clause, and vested at once in the State a complete title.

The language of the act is very broad. It confirms claims "*in all cases*" where the State had then made selections in part satisfaction of "*any*" grant made to said State by "*any act*" of Congress, and had disposed of the same to purchasers in good faith under her laws. The case in controversy falls directly within these provisions. The tract was a selection made by the State in part satisfaction of a grant from Congress, and had been sold by the State to a *bona fide* purchaser prior to the passage of the act. It has every one of the requisites called for by the confirmatory act, and in my opinion clearly falls within it.

Neither of the provisos to the first section of the act of 1866, limiting its general application, affects in any way the present case. The first provides that no selection made by the State, *contrary to existing laws*, shall be confirmed to the prejudice of certain other rights and reservations; the second that the State should not, under this act, acquire title to a greater quantity of land for school or improvement purposes than she is entitled to under law.

I am inclined to think that the former decision of the Department was made merely upon a construction of the act of 1853, and without reference to that of 1866.

I recommend that the Commissioner be instructed to certify to the State the land in controversy.

Very respectfully,

W. H. SMITH, *Assistant Attorney General*.

HON. C. DELANO, *Secretary of the Interior*.

[Not concurred in by the Secretary, who, on April 21, 1873, adopted the opinion of acting Attorney General B. H. Bristow, wherein it was held that as the tracts had not been certified to the State, title did not pass under the Act of 1866, but was still on the United State.]

No. 451.

RANK v. LUCE ET AL.

Held—That the right of the State of California to a section 16 (for school purposes) which was unsurveyed till 1869, was not an adverse claim as against a party otherwise entitled under the seventh section of the act of 1866.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 22, 1873.

SIR:—I have examined the case of *John R. Rank v. Charles Luce*, the State of California, and the Central Pacific Railroad Company, involving title to certain tracts of land in Sections 16 and 21, Tp. 13 N., R. 5 E., M. D. M., California, on appeal from your decision of March 1st, as modified June 11th, 1872.

Rank, as early as 1859, settled upon the N. $\frac{1}{4}$, N. W. $\frac{1}{4}$, Section 21, and enclosed large portions of both sections. His residence in good faith as a pre-emptor was continued on said N. $\frac{1}{4}$, N. W. $\frac{1}{4}$, 21, from the date of settlement until 1863, when he moved his house a consid-

erable distance to the north, with the intent to place it upon the S. W. $\frac{1}{4}$ Section 16, which quarter section he then selected as his pre-emption claim, the same being within his enclosure made in 1859. The survey, however, placed the house a few feet south of the south line of section 16, in the N. W. $\frac{1}{4}$, N. W. $\frac{1}{4}$, 21.

June 10th, 1869, he filed for W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, 16, and N. $\frac{1}{2}$, N. W. $\frac{1}{4}$, 21. August 9th, 1869, he amended his filing so as to make it cover the S. W. $\frac{1}{4}$, Section 16. At the date of the hearing his house still remained in Section 21. He has out-houses and fencing in Section 16, and has cultivated over one hundred acres in the quarter he claims. He is a qualified pre-emptor, and his filings are in time.

Luce claims under the seventh section of the act of Congress approved July 23, 1866, certain tracts of land in Sections 16 and 21. He is shown to be legally entitled under the act, unless excluded by prior adverse rights.

The State of California claims Section 16, under the act of Congress approved March 3d, 1853, granting the sixteenth and thirty-sixth sections in each township to the State for school purposes.

The Central Pacific Railroad Company claims Section 21, under its grant, by act of Congress approved July 2d, 1864. This section is within the fifteen-mile limits of the road, which was definitely located at this point, June 1st, 1863.

The land in contest was surveyed May 12th, 1869.

You award the S. W. $\frac{1}{4}$, Section 16, to Rank, and reject the entire claim of Luce to all tracts in Section 16, on the ground that the claim of the State was a valid adverse right at the date of the act of 1866, and to all tracts in Section 21 on the ground that the grant to the Central Pacific Railroad of July 2d, 1864, was also an adverse right within the meaning of the act at that date.

I hereby award to Rank the land covered by his first declaratory statement, viz: W. $\frac{1}{2}$, S. W. $\frac{1}{4}$, Sec. 16, and N. $\frac{1}{2}$, N. W. $\frac{1}{4}$, Sec. 21. This tract will include his dwelling house and principal improvements on both sections, and will give him the maximum quantity of one hundred and sixty acres. He had a valid pre-emption right to the land in Section 21, at the date of the definite location of the road, and also a valid right against the State under the 7th section of the act of 1853, at the date of the survey.

The land in contest in Section 21 is hereby held as inuring to the Railroad Company under its grant of 1864. The Spanish title under which Luce claims was finally rejected in 1861. The land formerly claimed under it was, therefore, so far as that grant was concerned, unappropriated public land, subject to the operation of the granting act at the date of its passage. The line of the road having been previously located at this point, the grant of 1864 took effect to vest title in the Railroad Company with reference to this tract immediately upon its passage. Long prior to the act of 1866, therefore, title to this tract had vested in the Company.

The tracts claimed by Luce in Section 16 I award to him under the act of 1866. Under the modification I have made, for the reason stated, of your award to Rank, there is no further contest between him and Luce. The only question necessary to be considered is whether the claim of the State under the act of 1853 excludes that of Luce under the act of 1866. I do not think that it does. It was recently held in the case of the *State of California v. the Keystone Mining Co. et al.*,

that the grant to the State by the act of 1853 did not take effect to vest title to any particular tracts of land until survey, and that prior to that time Congress had power to make any disposition of the land it deemed expedient. In this case Congress provided, before survey, that the assignee of Mexican title should have the right to purchase the land, unless the same was then covered by prior valid adverse rights. I do not think the claim of the State prior to survey was such an adverse right as is contemplated by the act, and in my opinion the survey did not defeat the right under the act of 1866. That right, if exercised within reasonable time, cannot be affected by a survey setting off the land as a school section, and in this case I consider that right to have been exercised within such reasonable time.

I modify your decision in the particulars suggested, and return herewith the papers presented with your letter of April 20th, 1873.

Very respectfully,

W. H. SMITH, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner of General Land-Office.*

No. 452.

STATE OF CALIFORNIA v. HOWARD ET AL.

This case presents the question whether under the acts of March 3, 1853, (10 Stat. 346, Sec. 6,) and July 23, 1866, (14 Stat. 218, Secs. 6, 13,) a claimant under a state selection of unsurveyed land as indemnity for loss of school land, is required after survey to present and prove up his claim within the time allowed pre-emptors, or whether the first section of the act of 1866 confirms a selection thus made without reference to the requirements of the 3d Sec.

Held—That the 1st Sec of the Act of 1866 was limited by the 3d Sec., and that a failure to file within the legal period and until after filing by another would defeat the claimant.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, December 27, 1871.

SIR:—I have examined the cases of the *State of California v. Alonzo Howard, William Lane and Jacob Bryan*; and the *State of California v. Jno. M. Bell and Johanna Week*, coming up upon appeal from the decision of the Commissioner of the General Land-Office of February 21st and February 25th, 1871. As these two cases involve the same question, arising upon identical statements of facts, I have considered them together.

The question presented is, whether under the acts of March 3d, 1853 (10 Stat. 346, Sec. 6), and July 23d, 1866 (14 Stat. 218, Secs. 13 and 6), a claimant under a state selection of unsurveyed land, as indemnity for loss of school lands in sections 16 or 36, is required after survey to present and prove up his purchase and claim within the time required of a pre-emptor, or whether the effect of the 1st section of the act of 1866 is to confirm a selection thus made, without reference to a compliance with the requirements of the 3d section. The act of 1853 granted sections Nos. 16 and 36 to the State for school purposes, with the right to select indemnity lands, in case such selections should be covered by certain claims. The act of 1866 (Sec. 6) provides that the act of 1853 shall be construed as giving the right to select indemnity, for loss of school lands in sections 16 and 36, by reason of settlement prior to survey, reservation for public uses, or by being included in

Spanish or Mexican grants, or other private claims, etc., etc. Section one of the act of 1866 is in part as follows:

"That in all cases where the State of California has heretofore made selections of any portion of the public domain in part satisfaction of any grant made to said State by any act of Congress, and has disposed of the same to purchasers in good faith under her laws, the lands so selected shall be, and hereby are, confirmed to said State."

The proviso to this section excepts selections made contrary to existing laws, to which any other right has attached at the date of the passage of the act. Section three provides that where selections are upon lands surveyed only by State authority, and the lands are sold, such selections shall have the same force and effect as the pre-emption right of a settler on unsurveyed land; and that upon filing of the town plat, "*the holder of the State title shall be allowed the same time to present and prove up his purchase and claim under this act as is allowed to pre-emptors under existing laws.*"

In my opinion the first section of this act, so far as it confirms locations upon unsurveyed lands, is limited in its operation by the third. A location of the class mentioned in the first section, if upon unsurveyed land, must be subject to the restrictions imposed by the third. This section provides that a location of this class "shall have the same force and effect as the pre-emption right of a settler upon unsurveyed land," and that after filing of the town plat the State claimant shall have "the same time to present and prove up his purchase and claim under this act, as is allowed to pre-emptors under existing laws." It in effect places a claimant under such State selection upon the same footing as a pre-emption settler on unsurveyed land. Such settler has, under the act of May 30th, 1862, (12 Stat., 410,) three months after the filing of the town plat within which to declare his settlement.

This is therefore the time given by the third section to the State claimant. A failure on the part of the pre-emptor to comply with the provisions of law in this particular, in case of contest, and a prior filing, defeats his claim.

See my opinions in *Cardwell v. Goddard*, Opinions p. 99; *Schaffer v. Scheibel*, Opinions p. 198. In my opinion a like failure on the part of the State claimant, in case of a location of the class under consideration, is followed, in the event of a controversy and prior filing, with a like result.

To say that such a location is confirmed by the act of 1866, is in effect to ignore the third section, which must apply to this class of locations or have no force or operation whatever.

A recent decision of the Supreme Court holds that a pre-emptor must file within the time required by law, or be supplanted by any other pre-emption claimant *who files before him*; but if his own filing is in fact the first in point of time, he will be considered as within the spirit of the law. In each of the cases under consideration, the State claimant, although not within the time required by statute, was still the first to assert his claim by filing.

The decision of the Commissioner should therefore on this ground be affirmed.

Very respectfully,

W. H. SMITH, *Assistant Attorney General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, January 4, 1872.

No. 453.

HYATT v. SMITH.

Construction of the 7th sec. of the act of July 23, 1866, to quiet land titles in California.

Held—That land conveyed to tenants in common, and afterward partitioned by parol and occupied and possessed in accordance with such parol partition, was within the terms of said section; that land suited for grazing purposes only and used for grazing, although not actually fenced, was also within the fair meaning of said section.

Decision by Acting Secretary Cowen, Dec 19, 1872.

No. 454.

ALEXANDER v. CALIFORNIA & OREGON R. R. CO.

Held—That under the 7th sec. of the act of July 23, 1866, (14 Stat., 220,) the party to be entitled to the benefits given by said section must have "used, improved and continued in the actual possession" of the premises claimed, and that constructive possession is not sufficient.

Decision by Acting Secretary Cowen, April 13, 1872.

No. 455.

JOHN C. WHITE.

A party purchased from a Mexican grant claimant, receiving a warranty deed to which was attached a condition that if the grant should be rejected the money paid should be returned.

Held—That the party was not a *bona fide* purchaser, within the meaning of the statute.

Commissioner's decision January 7, 1874, affirmed by the Secretary August 18, 1874.

No. 456.

BASCOM v. DAVIS.

The act of July 23, 1866, is purely remedial, and was intended to secure to *bona fide* purchasers the land actually in their possession and used and improved.

A claim will not be rejected because the claimant is not in possession of his entire purchase.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Sept. 19th, 1873.

SIR:—I have examined the case of *L. H. Bascom v. Moses Davis*, involving title to lot 3, section 11, township 7 south, range 1 west, Mount Diablo meridian, California, on appeal from your decision of Dec. 3, 1872, rejecting the claim of Davis and awarding the land to Bascom. * * * * *

You reject the claim of Davis on the ground that he has not occupied the land "as according to the lines of his original purchase." As it is clearly shown that he has occupied by specific lines a *portion* of the land purchased, your decision holds substantially that when a purchase has been made in good faith from Mexican grantees or their assigns,

and the title so purchased has been rejected and the land excluded by final survey, the purchaser is not entitled under the act of 1866 to enter such portion of the original purchase as he has actually occupied by specific lines, but is necessarily compelled to show actual possession of the entire purchase, in order to be entitled to any entry. In other words, you hold that the phrase "as according to the lines of the original purchase," cannot be construed so as to include a possession by specific boundaries *within* the specific boundaries of the original purchase.

In my opinion, this is too strict and technical a construction. The act is purely remedial, and must be liberally construed to give full effect to the intent of Congress, which was evidently to secure to all *bona fide* purchasers the land actually in their possession and used and improved. Under your construction, a *bona fide* purchaser for value, who had actually gone into possession of a portion of the land purchased, resided thereon and cultivated and improved it for years, would be without remedy under the act, in case it should appear upon trial that some portion, no matter how small, of his original purchase was not in his actual possession; for it will be remembered that *actual* possession only is recognized by the act. Thus, if a purchaser, finding a portion of his purchase in the actual adverse occupancy of another, should still take possession of the residue, and use every means to gain possession of the whole, yet if perchance all his efforts failed, and at the date of his application the adverse possession continued, he would be denied, under your construction, the right to enter his actual improvements. So, too, if the purchaser be driven away from any portion of his original purchase by the encroachment of trespassers, he would be without remedy under the act to save what was left to him, for there would be an actual adverse possession within his original lines. It is a notorious fact that in a large majority of cases, where purchases have been made from Mexican grantees or their assigns, purchasers once in possession have been obliged to yield large portions, sometimes nearly their entire claims, to mere trespassers, who made forcible entries and ejected them. Under your construction, each of such purchasers would be denied the right to enter that portion of his purchase of which he had been able to maintain an actual possession.

Can it be possible that Congress, in a remedial statute that confirmed, by other sections than that under consideration, inchoate and imperfect rights and illegal entries, intended, with reference to this class of claims, to prescribe a rule so rigorous and inequitable? What good reason can be given for following such a rule, save that it is perhaps justified by an extremely technical and strict construction? 'I know of none. No one is injured by a more liberal construction. The rights of no adverse claimant are prejudiced; the Government receives the usual price for the land, and justice is done to deserving claimants.

In the case under consideration, a good reason is shown for the failure of the claimant to occupy the entire tract purchased subsequent to March 1, 1867. On that day Congress passed an act granting to the corporate authorities of the town site of Santa Clara all the right, title, and interest of the United States in and to all lands situated within the corporate limits of said town, subject to all adverse rights and claims.

On the 8th and 23d of March, 1867, the then Secretary of the Interior held this act to be an absolute grant of the title of the Government to the authorities of the town, and that all adverse claims of every de-

scription must be asserted, if at all, in the courts. The corporate limits of the town embraced all the land included in the original purchase by Davis, except lot 3. This in any case would, in my opinion, excuse his want of possession of the land thus granted subsequent to the date of the act.

I think Congress intended to include such cases as this under consideration in the remedial provisions of the act of 1866, and I think it adopted language which, although ambiguous, is still susceptible of a construction to carry out such intention.

I therefore reverse your decision, and award lot 3 to Davis; as the claim of Bascom for lot 2 is not contested, and as he is shown to have claimed it in good faith since 1868, I see no good reason why his right thereto should not be recognized, and I accordingly award it to him.

The papers transmitted with your letter of May 15, 1873, are herewith returned.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 457.

WILSON v. CALIFORNIA & OREGON R. R. CO.

Under the 7th section, the right of purchase acquired by assignees under Mexican grants is alienable and descends to heirs.

DEPARTMENT OF THE INTERIOR,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, D. C., Feb. 17th, 1873.

SIR:—I have examined the case of *Sanford E. Wilson v. The California and Oregon Railroad Company*, on appeal from the decision of the Commissioner of the General Land-Office, of September 20, 1872.

Wilson claims under the 7th section of the act of July 23d, 1866, showing a purchase subsequent to survey, for a valuable consideration, of certain lands formerly included within the claimed limits of a confirmed Mexican grant, but excluded by final survey. It is admitted that he has used, improved and continued in the actual possession of the same as according to the lines of his original purchase, and also that the possession of his grantor was in all respects in full compliance with the provisions of the act.

The California and Oregon Railroad Company claims under its grant of July 25th, 1866. (14 Stat., 239.) In the case of *Musick v. McKillip*, decided by you July 21, 1871, in accordance with recommendations in my opinion of July 15th, 1871, it was held that the right to purchase conferred by the 7th section of the act of 1866, was not alienable, and did not descend to heirs. This, I then thought, was the proper construction to be given to the section referred to; but upon careful re-examination of the whole question, and in view of the recent decision of the Supreme Court in *Myers v. Croft*, (13 Wallace, 291,) I am now of the opinion that a more liberal construction should be adopted. The Supreme Court in the case just mentioned affirms the right of a pre-emption claimant to sell the land at any time subsequent to entry, and declares that, without the special restrictions of the statute, the pre-emption right would also be alienable before entry. I see no material difference in nature or effect between the right of pre-emption conferred

by the act of 1841, and the right of purchase under the act of 1866. Both are preferred rights of purchase, depending upon compliance with certain conditions on the part of the claimant. In the former these conditions are mainly prospective in their contemplated performance; in the latter they are conditions precedent. The Supreme Court holds that in the former the right is alienable, only because of the special restrictions of the statute. No such special restrictions upon alienation are found in the 7th section of the act of 1866.

I am therefore now of the opinion that the right conferred by this section is alienable and descends to the heirs upon the death of the purchaser, and I recommend that this view of the law be adopted in the present and followed in all future similar cases, and that the decision of the Commissioner founded upon the former ruling be reversed.

Very respectfully,

W. H. SMITH, *Astt. Atty. General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by the Secretary, Feb. 17, 1873.

No. 458.

DIBBLE v. CALIFORNIA & OREGON R. R. CO.

The Secretary says: "Dibble purchased the Spanish title subsequently to the final rejection of the grant by the Supreme Court of the United States, and he is not therefore within the remedial provisions of the 7th section of the act." (*Davis v. McClay*, Secretary's decision Dec. 15, 1873, to the same effect.)

Decision of the Commissioner of June 5, 1874, affirmed by the Secretary Dec. 24, 1874.

III. SWAMP LANDS.*

No. 459.

Instructions in cases of contested swamp selections.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., January 15, 1874.

GENTLEMEN:—In cases of contested swamp selections, a day having been set for trial by the register and receiver, at least thirty days notice thereof should be given to the State authorities, to the county authorities, and to all parties claiming to hold title under the State, so far as they may be known. Personal notice should also be given to occupants of the land who have notified the land officers of their claim, whether under the swamp grant or adverse thereto.

*For California Swamp Lands see No. 449.

The swamp land laws are as follows:

March 2, 1849,	Statutes	Volume 9,	page 352,	chap. 87.
Sept. 28, 1850,	"	"	9,	" 519, " 84.
March 2, 1855,	"	"	10,	" 634, " 147.
" 3, 1857,	"	"	11,	" 251, " 117.
" 12, 1860,	"	"	12,	" 3, " 5.
July 23, 1866,	"	"	14,	" 218, " 219.

See Nos. 46, 83, 135 and 223, Part II.

In their report the register and receiver should show upon whom and in what manner notices have been served. The original notice to the State and county authorities, with acknowledgment of service endorsed thereon, if returned to you, should be attached to each case; if not returned to you, copies of such notices, with the affidavit of some competent person showing that original notice had been deposited, post-paid, in the post-office, and stating the time when thus deposited and to whom addressed, should be attached.

In case of personal notice, if not returned to you with service endorsed thereon, it should be shown by affidavit on whom and the time when such service was made. Notice should also be published in a paper published at the county seat of the county in which the lands in question are situated having the largest circulation in the county. Should no paper be published in the county, the paper having the largest circulation in the county adjoining should be the medium selected for publication of such notice. The lands should be described in the notice by the number of township and range and section. Where a whole section is in controversy, it may be so designated without describing it in its smallest subdivision; so of a half section, a quarter section, or half quarter section, when such subdivision is the subject of investigation; but in every case the exact tract in controversy should be designated in the usual manner of describing lands in conformity with the system of public surveys. In taking testimony no particular form is required, the chief object being to ascertain the true character of the land in *smallest legal* subdivision, whether swampy or not, or whether or not it is subject to such regular periodical overflow at the planting, growing, or harvesting season as to injure or destroy a crop; its character on the 28th of September, 1850, ascertained if possible; the means of knowledge of the witnesses; if they are familiar with the mode of surveying and marking public lands, or if not, by what means they identify the tract about which they testify; how long they have known the land; what means they have used, if any, to reclaim it, and particularly whether or not the witness is either directly or indirectly interested in the result of the investigation, and such other questions as you may deem necessary to elicit the facts in the case. At the closing of the evidence in each case, you will please transmit the same, (with all the papers thereto appertaining attached,) with your joint opinion, to this Office.

The expenses of the notices and the investigation must be borne by the contestants.

No investigations should be allowed unless authorized by letter from this Office. Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

REGISTERS AND RECEIVERS.

No. 460.

STATE OF NEBRASKA.

Grants of the public domain are bestowed by special legislation only, and the State of Nebraska has never received a grant of swamp lands.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,

Washington, D. C., Jan. 19, 1874.

HON. R. P. LOWE, *Washington, D. C.*:

SIR:—I have to acknowledge receipt of your letter of December 18,

1873, enclosing application of the State of Nebraska for her swamp lands, etc., by Kennard and Lowe.

In reply I have to say that upon examination I am of opinion that this claim does not differ in any respect from that of the State of Nevada, rejected by this Office May 2, 1871. (Copy of decision enclosed.)

This decision was affirmed by the Secretary of the Interior June 1, 1871, and I am therefore compelled to reject the application filed by you.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

[ENCLOSURE.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 2, 1871.

MESSRS. BRITTON & GRAY, *Washington, D. C.*:

GENTLEMEN:—I am in receipt of your letter of the 5th ultimo, asking that instructions be issued to the registers and receivers of the several land districts within the State of Nevada to enable that State to make selections of swamp lands under the act of 28th September, 1850. The fourth section of the act referred to provides: "That the provisions of this act be extended to and their benefits be conferred upon each of the other States of the Union," etc. It has always been held by this Office that the grant extended only to States in existence at the date of the act, and that as new States were admitted to the Union additional legislation was needed to confer the benefits of the swamp grant upon them. In this construction Congress seems to concur; for in 1860 we find a special statute extending the swamp grant to the States of Oregon and Minnesota, which States had been admitted subsequent to the passage of the grant of 1850. It is held, however, by you, that the enabling act of March 21, 1864, provides—

1st. That after certain requirements (which were met) the State of Nevada should be admitted to the Union by Executive proclamation, upon an equal footing with the original States, without further action on the part of Congress; and

2d. That the laws of the United States not locally inapplicable shall have the same force and effect within said State as elsewhere within the United States; and that these provisions carry with them to the State an extension of the swamp grant of 1850.

I see nothing in these enactments which can reasonably be construed as relating to the swamp land or similar grants.

All grants of the public domain are in the nature of benefits, and not usually bestowed by general, but by special legislation, derived through the original granting acts, designating the character and extent of the grants and the manner in which they are to be made effective and secure to the grantee.

The laws referred to under the second head above are evidently such laws as relate to public polity, and not specific grants. If this were otherwise, the organic territorial act of March 2, 1861, invested the *Territory* of Nevada with the benefits of the swamp grant, for we find (Vol. 12, p. 214, Sec. 16) the same provisions there as contained in the enabling act.

In the case of Minnesota, the act admitting the State contains a sim-

ilar clause, and yet, as before stated, additional legislation was thought necessary to extend the swamp grant to that State.

In the enabling act of March 21, 1864, we find among other things certain specific grants of lands to the prospective State, but among these grants nothing is said of swamp lands. On the contrary, the State is required by the fourth section of that act to disclaim all right, title, and interest to unappropriated public lands within her limits; and as this Office is aware of no appropriation of swamp lands within that State, the title to such lands must still remain with the United States.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 461.

STATE OF OREGON v. STOTT AND WAGGONER.

When township 2 S., 4 W., Oregon, was surveyed, in 1852, a large portion of it, including the tracts in contest, was covered by a body of water supposed to be a lake, and by the surveyor general designated on his plat as such. The provisions of the act entitled "An act to enable the State of Arkansas and other States to reclaim swamp lands within their limits," approved September 28, 1850, were extended to the States of Minnesota and Oregon by the act of March 12, 1860, under certain restrictions.

The State of Oregon claimed the land as swamp. The defendants claimed under the pre-emption laws.

1st. The act of March 12, 1860, made a grant *in presenti* to the State of Oregon of all lands within her limits which were at that date swamp and overflowed, made thereby unfit for cultivation, with the exception of that class mentioned in the proviso to the first section of said act.

2d. A tract of land is not necessarily excluded from the grant because at any given date it may be found to be covered by water, having the appearance of a lake, and in the judgment of the surveyors of a character to be mean-dered.

3d. The State, notwithstanding the return of the surveyor general, had the right to show, by any competent evidence, by parol or otherwise, the character of the land at the time her right accrued, and the weight of such evidence should govern.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Dec. 2, 1874.

SIR:—I have examined the case of the *State of Oregon v. Frank S. Stott and John W. Waggoner* involving title to lots 6, 7, 8, 9, 10, 11, and N. W. ¼, N. E., ¼, Section 12, 2 S., 4 W., Oregon City, on appeal from your decision of Jan. 20, 1874, in favor of the defendants.

The State claims the land as swamp and overflowed, under the provisions of the act of Congress approved March 12, 1860, (12 Stat., 3,) having selected the same by list, filed in the local office September 19, 1871. The defendants, claiming as pre-emptors, applied August 28, 1871, at the local office, to file declaratory statements, alleging settlements August 26 and 27, respectively. These applications were referred to your office by the local officers, in compliance with instructions theretofore given them relative to this class of cases. Upon receiving further instructions from your office, the declaratory statements were received and filed. On the 4th of March, 1872, the claimants appeared at the local office, made final proof, and tendered payment for the land. The proof was received and filed, and the fact of the tender was noted. The State having asserted her claim to the land as swamp overflow, and having selected the same September 19, 1871, your office, May 20, 1872,

ordered a hearing before the local officers to determine the rights of the respective parties. The local officers awarded the land to the State. You reversed their decision, and both parties have appealed to the Department.

You rejected the claim of the State upon the ground that the records of your office showed that the tracts in contest were covered by a body of water at the date of the act of 1860, and were not, therefore, included in the grant by that act to the State.

I do not agree with you, either in your finding of this fact or your application of the law thereto. So far as appears from the papers presented, the records of your office do not show the character of the land on the 14th day of February, 1859, (date of the admission of Oregon as a State,) or on the 12th day of March, 1860.

They do show that when the township in which the land is situated was first surveyed, viz, in —, 1852, a large portion of it, including the tracts in contest, was covered by water, forming what appeared to be a lake, the margin of which was meandered. You appear to have assumed that the land remained in the same condition in March, 1860. You erred in this assumption. The State, in the absence of any express agreement as to the kind of proof to be relied upon, should have been allowed to show by any competent evidence, by parol or otherwise, the character of the land at the time her right accrued, and the weight of such evidence should have governed your finding of fact. (*R. R. Co. v. Smith*, 9 Wall, 95.) The rule laid down by the Supreme Court in that case is now the accepted rule of practice in your office and the Department. (*Conkling v. Wendell*, Secretary's decision, Nov. 11, 1873.) But admitting the fact to be as found, and your conclusion of law does not necessarily follow. A tract of land is not necessarily excluded from the grant because at any given date it may be found to be covered by water, having the appearance of a lake, and in the judgment of surveyors of a character to be meandered.

That very fact may be a material one in establishing the general fact that the land is swamp and overflowed. The presence of water may not indicate the existence of a permanent lake. It may be the result of periodical overflow. In the case under consideration, as will be hereafter noticed, this was actually the fact. Under these circumstances, it is evident that the land would be swamp and overflowed, and within the grant. The first section of the act of 1860 is in the following words, viz:

"That the provisions of the act of Congress entitled 'An act to enable the State of Arkansas and other States to reclaim the swamp lands' within their limits, approved September 28, 1850, be, and the same are hereby, extended to the States of Minnesota and Oregon: *Provided*, That the grant hereby made shall not include any lands which the Government of the United States may have reserved, sold, or disposed of in pursuance of any law heretofore enacted, prior to the confirmation of title to be made under the authority of the said act."

The act of 1850 has been repeatedly held by the courts and by the Department to be a grant *in presenti*, vesting an indefeasible legal title in the State to all lands at the date of its passage, "swamp and overflowed lands made unfit thereby for cultivation." (*Railroad Company v. Fremont County*, 9 Wall., 89; *Railroad Company v. Smith*, Id., 95; *Wendell v. Conkling*, Secretary's Decision, Nov. 11, 1873.) If the right of the State did not attach before the act of 1860, that act, extend-

ing that of 1850 to the State of Oregon, was a grant *in presenti* to said State of all lands at that date swamp and overflowed, made thereby unfit for cultivation, with the exception of that class mentioned in the proviso.

Two main questions arise upon the consideration of the appeals, viz:

First. Upon all the competent evidence submitted, was this land swamp and overflowed and made unfit thereby for cultivation upon the 12th day of March, 1860, the date of the aforesaid act?

Second. Is the land in controversy excepted from the grant by the proviso of the first section?

First. I have carefully examined all the evidence, documentary and parol, accompanying the appeal, and I am satisfied that at the date of the grant this land was swamp and overflowed, and rendered thereby unfit for cultivation. The body of water known as Wappatoo Lake is not now, nor was it in 1860, a permanent lake. It is formed annually in the late fall or early winter by a rise in the creek or river Taulitin, the waters of which during the rainy season are impeded in their flow, and backed up through the mouth of the so-called lake, and cover to a depth of several feet a valley or ravine surrounded by higher lands. The water remains upon the lands during the winter months, down to about the first of June or July, as the seasons vary, when it recedes, and leaves the bed of the lake in a swampy, or partially swampy, condition during the rest of the year. During the absence of the water the land produces a species of swamp-grass, and becomes valuable pasture land; but there can be no reasonable doubt that in its present condition it is entirely unfit for any kind of cultivation.

I understand that it has been the practice of your office to hold all lands as not swamp when at the time of the Government survey they were covered with water to such a depth, and in such a form, as to require meandering, but have subsequently from natural causes become dry. I see no objection to the application of this rule to cases where the State has agreed to accept the field-notes of the Government surveys as conclusive evidence of the character of the land. But it clearly should not be applied to a case like that under consideration, where the survey was made long prior to the grant, and where the State distinctly refused to be bound by the Government surveys. The Supreme Court, in the case of *Railroad Co., v. Smith*, already cited, referring to parol evidence introduced in the trial below, to show the character of the land at the date of the act, says:

"The matter to be shown is one of observation and examination; and whether arising before the Secretary, whose duty it was primarily to decide it, or before the court, whose duty it became because the Secretary had failed to do it; this was clearly the best evidence to be had, and was sufficient for the purpose."

The State had clearly the right to offer the parol proof presented, and it is the duty of the Department to consider it in determining the question of fact.

In my opinion, this land was swamp and overflowed at the date of the grant, and I so decide.

Second. The proviso of the first section of the act of 1860 is a clear limitation of the grant, excepting from its operations all lands which the Government may have reserved, sold, or disposed of, (in pursuance of any law theretofore enacted,) prior to the confirmation of title, to be

made under the act of 1850. In view of the construction given to the act of 1860 by the courts and the Department, it is evident that this confirmation of title referred to in the act of 1860 can only mean the patenting of the lands, as provided for by the second section of the act of 1850. Any reservation, sale, or disposition of the land by the Government under prior laws, therefore, prior to the patenting of the same to the State, as provided by the act of 1850, would except it from the operation of the grant to Oregon by the act of 1860.

Was there such a sale or disposition in this case? I have no doubt that a valid settlement under the pre-emption law, followed by subsequent residence, improvement, and cultivation in good faith, and final proof and payment or tender of the price, would constitute a sale and disposition within the meaning of the act. But in order to constitute such a sale, it is clearly essential that all these steps should have been taken in perfect good faith, with the honest intention to appropriate the land for agricultural purposes, and this must be affirmatively shown.

Grants of this character are construed most strongly against the grantee, but the grant being once shown to have attached to a class of lands, generally described, any alleged exceptions therefrom must be clearly and affirmatively shown.

Now the evidence in this case is such as almost to preclude the possibility of these defendants being claimants in good faith under the pre-emption law. With a full knowledge of the claim of the State, and the fact that for more than one-half of every year the land was covered by water to the depth of several feet, they moved upon the tracts and erected small houses or cabins. These cabins were placed upon stakes driven in the ground five or six feet high above the surface, and during the few months when it is claimed they were occupied by the claimants, viz., from October, 1871, to March, 1872, they could only be reached by the use of rafts or canoes. Before the waters came the claimants managed to break about half an acre of ground on the two claims, and there is no proof of any successful cultivation; and if the testimony of many apparently well-informed and credible witnesses is to be believed, such a thing is simply impossible upon the land as it now stands. The claimants lived in the houses referred to while engaged elsewhere at work temporarily, from October, 1871, to March, 1872, since which neither, so far as shown, has resided on the land.

In my opinion these defendants were not *bona fide* claimants under the pre-emption law. I think it is evident that they sought to obtain title to these lands under that law, not for the purpose of making the same their homes, or with any idea of cultivating or improving them, but merely upon speculation, and to secure the exclusive use of the pasture land during the summer months. Such a state of facts surrounding a pre-emption claim effectually negatives the idea of a sale or disposition within the meaning of the act of 1860.

In my opinion the tracts in controversy are within the general description of lands granted, and are not within the language of the exception.

It is claimed, however, that the State has forfeited her right to the land in contest by failure to select the same within the time prescribed by the second section of the act of 1860, that is to say, within two years from the adjournment of the State legislature, at the next session after notice by the Secretary of the Interior to the Governor of the State that the survey of the land had been completed and confirmed.

This objection is disposed of by reference to the fact that the notice provided for has never been given.

Your decision is reversed, and the tracts in contest are awarded to the State.

The papers transmitted with your letter of Aug. 17, 1874, are herewith returned.

C. DELANO, *Secretary.*

To the Commissioner of the General Land-Office.

No. 462.

Regulations in regard to proof required for indemnity under act of March 2, 1855, extended by act of March 3, 1857.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 18, 1872.

In order to make a final disposition of all claims for indemnity provided for by the act of Congress approved March 2, 1855, entitled "An act for the relief of purchasers and locators of swamp and overflowed lands," which act was extended by the act of March 3, 1857, the following rules and regulations in regard to the "due proof" to be made to the Commissioner of the General Land-Office, under the 2d section of said act, in order to obtain the indemnity aforesaid, have been adopted by this office, viz:

1st. No *ex parte* testimony will hereafter be considered, except such as may have been already forwarded to this office, taken in strict accordance with the rules and regulations of the office existing at the time of taking the same.

2d. The State, or its agent, claiming such indemnity, will be required to furnish this office with a list of the lands on which such indemnity is claimed, and indicate the time when the claimants will be prepared to offer testimony to establish the swampy character of the land.

So soon after receiving such list as practicable, this office will appoint times and places when and where such testimony will be taken, and will give the claimants at least thirty days notice thereof.

At the times and places thus fixed, some person accredited by this office will attend for the purpose of examining witnesses and adopting such other measures as may be necessary to protect the interests of the Government.

When the testimony is thus taken, the case will be considered by this office as closed, and no further evidence will afterwards be received.

The testimony in support of such claims must be evidence of at least two respectable and disinterested persons, who have personal and exact knowledge of the land as it existed on the 28th of September, 1850, the date of the swamp grant. Said witnesses must not only state that the greater part of each forty-acre tract, or other smallest legal subdivision, was on the 28th September, 1850, swamp and overflowed within the meaning of the grant, but at what seasons and to what extent this was its condition, designating particularly, also, how much or what proportion of the tract was thus rendered unfit for cultivation in its natural condition.

They must also give the reasons for their conclusions, state the

causes of the overflow, give name and description of the timber, shrubs and plants on the land, character and extent of the means necessary for their reclamation, contiguity of rivers, water-courses, lakes, &c., with a general description of the adjacent and surrounding tracts, and whether plowing and the removal of the timber, without ditching or draining, would not at that time have caused the water to disappear.

They must also state and show what is the present condition of the land, and if any changes have occurred in the character or quality thereof, what has caused such changes.

The witnesses here contemplated should be the person who purchased the land of the United States, and the present owner or occupant. Where the original purchaser is a non-resident of the State, or had no knowledge of the character of the land in 1850, or for any reason refuses to testify, or where the tract is unoccupied, or the occupant is in like manner uninformed, or refuses to testify, the facts herein required may be established by the testimony of two other respectable and disinterested witnesses resident nearest the land. In such cases, however, the State agent must file with the testimony his own affidavit also, stating the absence, want of information, or refusal, on the part of the first-named witnesses herein required, to testify, or of the non-occupancy of the land, and that the persons whose testimony he offers are the nearest well-informed residents to the premises.

The depositions may be taken before any officer authorized by law to administer oaths: *Provided*, That if taken before an officer other than the clerk of a court of record having a seal, the official character of such officer shall be established by the certificate of the clerk of the proper court of record under the official seal thereof.

In all cases the disinterestedness of the witnesses as to the matter in issue must be established under oath, and the credibility of such witnesses must be certified to by the officer taking the depositions, or established by the oath of witnesses to whose credibility he certifies.

WILLIS DRUMMOND, *Commissioner*.

DEPARTMENT OF THE INTERIOR, *March 21, 1872.*

Approved: C. DELANO, *Secretary*.

No. 463.

STATE OF ILLINOIS.

Selections for indemnity for swamp lands located by warrant or scrip must be made out of any of the unsold public land within the State in whose behalf application for indemnity is made.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Feb. 2, 1874.

SIR:—I have received your letter of the 27th ult., transmitting appeal from the decision of your Office in regard to indemnity for swamp lands claimed by the State of Illinois.

The act under which the claim is preferred was approved 2d March, 1855, (10 Stat., 634,) and provides in the second section thereof "that where such lands have been located by warrant or scrip, the said State or States shall be authorized to locate a quantity of like amount upon any of the public lands subject to entry at \$1.25 per acre or less," etc.

The first application for such indemnity appears to have been made by the State of Indiana. The present Governor of that State, Hon. T.

A. Hendricks, then Commissioner of the General Land-Office, held "that selections for such indemnity must be made out of any of the unsold public lands *in said State*;" and this construction of the act was approved by the Department on the 6th September, 1855.

On the 31st of March, 1858, on appeal from the decision of your Office by the agent of Henry county, Ill., the action of your predecessor in holding that such selections must be confined to said State was affirmed by Mr. Secretary Thompson.

On the 23d of April, 1861, the same question was presented to Mr. Secretary Smith in a report from your Office concerning the claim of the State of Iowa; and in a letter to your Office of 8th May, 1861, he used the following language: "It appears to have been the policy of this Department heretofore to confine the indemnity selections to the limits of the respective States entitled to such selections, and this policy is based upon a construction of the acts just mentioned as in *pari materia* with the act of 28th September, 1850, which expressly restricted the original grant to lands within the limits of the respective States to which the grant inured.

"This policy having been adopted under the act of 1855, and since adhered to under that act and the act of 3d March, 1857, without very serious opposition from the States interested, and being so manifestly fair as between the several States that may be entitled to indemnity in lands for swamp lands that have been located, will still be adhered to by your Office.

"Should cases hereafter arise in which the vacant public lands in any State should be found insufficient to satisfy a claim of this kind, it will be the duty of the Department to lay the facts before Congress for such measure of relief as that body may deem just and expedient."

The same question was again presented to Mr. Secretary Usher on the 26th January, 1863, on appeal from the decision of your Office. Mr. Acting-Secretary Otto, on the 12th March, 1863, stated that if the question were "now before the Department for the first time, the disposal of it would involve a consideration of very just and weighty arguments on both sides." After reciting the previous action of the Department, he adds: "Where continued practice has confirmed a construction of law through a series of years, as in this case, and this public administration and construction is of such importance as to be well known to Congress, and to be sometimes mentioned in annual reports to that body; and Congress has never interposed to modify or change that construction, but has rather sustained it by its declared policy in other matters of a similar kind, it would have to be a very strong and plain case of error and wrong that would justify a change in the administration of the law.

"Without saying that the original construction was or was not correct, it appears to be my duty to adhere to it whilst the law remains unchanged in any respect."

He also reiterates the opinion expressed in the last paragraph of the quoted portion of Mr. Secretary Smith's decision.

Mr. Secretary Browning, on the 8th February, 1868, the same question having been submitted to him on the Illinois claim, held that the question was finally settled by the decision of his predecessor, and, without entering into any discussion of the merits of the case, affirmed the decision of your Office.

It may, perhaps, be worthy of notice that in Mr. Browning's decision

it is stated that there were no public lands in Illinois subject to entry at \$1.25 per acre; the contingency on the happening of which both Mr. Smith and Mr. Otto had stated that it would be the duty of the Department to bring the matter before Congress. If this was done by Mr. Browning or his successors, it is not known to me. Neither can I say that in my opinion such is the duty of the Department. That State is ably represented in both the Senate and House of Representatives by gentlemen who are presumed to know and do their whole duty in guarding her interests.

Be that as it may, however, I entertain no doubt whatever that I am concluded by the uniform action of my predecessors from disturbing the decision of your Office. The question is *res adjudicata*, and must so remain until Congress orders otherwise. Your decision is affirmed, and the papers are herewith returned.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 464.

CIRCULAR.

Rejected swamp lands in Missouri.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

March 23, 1875.

REGISTERS AND RECEIVERS OF U. S. LAND OFFICES IN THE STATE OF MISSOURI.

GENTLEMEN:—Annexed is an act of Congress approved February 23, 1875, "for the relief of actual settlers on lands claimed to be swamp and overflowed lands in the State of Missouri." Part II., No. 135.

In order to enable persons entitled thereto to avail themselves of the provisions of this act, the following regulations are prescribed, with the approval of the Secretary of the Interior.

In addition to compliance with existing regulations governing entries under the pre-emption and homestead laws, claimants must establish the following facts:

1st. That the land was duly selected as swamp land, and withheld from market in consequence of such selection.

2d. Purchase in good faith from the State or county, with settlement upon, and improvement of the land, to the value of one hundred dollars.

3d. That the purchaser from the State or county, or his heirs, assigns, or legal representatives, has continued to reside thereon.

4th. That the claim of the State under the swamp grant has been rejected for the reason that the land was not in fact swamp and overflowed.

All pre-emption settlements and homestead entries made prior to February 23, 1875, where the requirements of law have been fully complied with, will take precedence of claims presented under this act.

S. S. BURDETT, *Commissioner*.

Approved: C. DELANO, *Secretary*.

IV. IN GENERAL.

No. 465.

CIRCULAR.

Relative to the effect of a State selection of land.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Jan. 5, 1872.

REGISTERS AND RECEIVERS U. S. LAND OFFICES.

GENTLEMEN :—It frequently occurs that where a proper selection by a State has been made under Congressional grants, as for instance, for school purposes, internal improvements, universities, agricultural colleges, swamp lands, &c., and the selections duly filed with the district land officers, that said officers allow private entries and locations, pre-emptions and homesteads, to be made for such lands. The consequent result of this error is, unnecessary conflict and needless expense to claimants.

A selection by the State has the effect of an entry of the land, and withdraws the tract from further disposal, unless the selection shall be subsequently rejected for cause, subject of course to the perfection of any pre-existing valid pre-emption claim. Therefore, when such selections are filed, you will enter them on your records, report them in the usual manner, and allow no further disposition of the tracts except in case of prior pre-emption, or instructions from this office.

Acknowledge receipt of this.

WILLIS DRUMMOND, *Commissioner*.

No. 466.

D. E. MITCHELL.

Mitchell settled on Sec. 16 in Minn., Dec. 15, 1870. The section was surveyed in the field in Sept., 1870, and approved Tp. plat filed June 17, 1871.

Held—That under Joint Resolution of March 3, 1857, (11 Stat., 254,) and act of Feby. 26, 1859, (11 Stat., 385,) the land should not go to Mitchell.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 28th March, 1873.

SIR :—I have considered the question raised by the appeal of Dennis E. Mitchell from your decision of July 16th, 1872, holding for cancellation his pre-emption entry for the W. $\frac{1}{4}$ N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$, N. W. $\frac{1}{4}$, and N. W. $\frac{1}{4}$, N. E. $\frac{1}{4}$, Section 16, Tp. 137, R. 35, St. Cloud, Minnesota, on the ground that Section 16 was reserved for school purposes, and the alleged settlement of Mitchell was subsequent to the survey of the township.

It is alleged upon appeal that you erred in holding that the land was surveyed prior to the settlement of Mitchell.

The survey of township No. 137 was commenced in the field, September 19th, and completed September 30th, 1870. The approved township plat was filed in the local office June 17th, 1871. Mitchell's alleged settlement was December 15th, 1870.

The date of the survey in the field, and not the time when the township plat is filed in the local office, is the date prior to which settlement must be made in order to give pre-emptors valid claims in school sections. The Joint Resolution of March 3d, 1857, (11 Stat., 254,) upon

which the claimant in this case relies, is controlled and explained in this particular by the act of February 26, 1859, (11 Stat., 385,) which provides that rights of pre-emption in school sections shall be recognized when settlements have been made "*before the survey of the lands in the field.*"

I affirm your decision, and return herewith the papers transmitted with your letter of February 5th, 1873.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 467.

INSTRUCTIONS.

Selections in certain fractional townships in Missouri for support of schools under act of June 22, 1874.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Sept. 8th, 1874.

REGISTER AND RECEIVER, MISSOURI.

GENTLEMEN:—Your attention is invited to the act of Congress approved June 22, 1874, entitled "an act to appropriate lands for the support of schools in certain fractional townships in Missouri," which is as follows: (Part II., No. 128.)

In order to secure uniformity of action in making the selections authorized by the above act, the following rules are prescribed for your government.

The law directs that the selections shall be made by the "Commissioner of the General Land-Office out of any unappropriated public land within the State of Missouri, subject to sale at the minimum price of \$1.25 per acre. *Provided*, That the said Commissioner, in making such selections, shall select such land as shall be designated to him for that purpose by the County Courts of the Counties in which such fractional townships are situated."

You will therefore, on receipt of this Circular, at once notify the proper authorities of your readiness to assist them in making the selections in accordance with the principles of adjustment and the provisions of the act of 20th May, 1826, viz:

For each fractional township containing a greater quantity of land than $\frac{3}{4}$ of an entire township (that is to say, more than 17,280 acres,) one section is to be selected.

For each fractional township containing a greater quantity of land than $\frac{1}{2}$ and not more than $\frac{3}{4}$ of a township (that is to say, more than 11,520 acres, and less than 17,280 acres,) $\frac{3}{4}$ of a section is to be selected.

For each fractional township containing a greater quantity than $\frac{1}{4}$ and not more than $\frac{1}{2}$ of a township, (that is to say, more than 5,760 acres, and not more than 11,520 acres,) one-half section is to be selected.

For each fractional township containing a greater quantity than one entire section and not more than $\frac{1}{4}$ of a township, (that is to say, more than 640 acres and not more than 5,760 acres) $\frac{1}{4}$ of a section is to be selected.

The selections are to be made in legal subdivisions, according to the official township plats on file in the local office.

The law allows selections to be made of surveyed lands, whether offered or unoffered; but no selection is admissible of any land to which a pre-emption, or other valid claim, may have attached, nor of any land which is, or may be, reserved from sale by any law of Congress, or proclamation of the President of the United States, nor of any tract which is reserved, or withdrawn from market for any purpose whatever, nor of mineral land.

It is therefore necessary that the agent of the State, in making the selections, should make such careful preliminary examination as will enable him to select lands to which there exists no valid claim by pre-emption or otherwise, and which are not mineral lands; and to avoid embarrassment and delay consequent upon such conflict, you will also examine the plats, records, and files of your office, and see that the selections are in all respects free from objections before the lists are reported to this office.

Herewith you will receive a form to be used for selections under this act. This form requires that the date shall be given on which the list is filed in the local office, that being the date on which the selection takes effect; also that it be certified and signed by the locating agent of the State, and certified by the Register and Receiver as to the correctness of the same, before the lists are reported to this office.

The selections for each fractional township should be made in one body of land if practicable; if not, in separate quarter sections. That is, if a township is entitled to 320 acres indemnity, that quantity should be selected in one contiguous body if practicable; if not, in two separate quarter sections. The number of the fractional township, in lieu of which the selection is made, should be given in the left-hand column of the form, also the quantity of land said fractional township contains.

The tracts selected should be entered in your tract books, and on the township plats, and be withheld from sale or entry, until you are officially advised of their approval or rejection by this Department. Upon the receipt of the copy of approved list at your office, you will note said approval on your records, giving also the date of such approval.

You will bear in mind that no expense whatever will be incurred by this Department in providing lists for these selections, as all such must be provided by the State or county authorities, after the manner of the form enclosed.

You will retain a record of all lists reported to this office, and when approved you will note the fact thereon, and refer to the date of the letter communicating such advice. Applications for the selection of school lands by the State can only be received and filed by you where the land has been surveyed and the official township plats are on file in your office.

The State authorities will have no right to sell or dispose of any of the lands selected until they shall have been furnished with certified lists of the approval by the Secretary of the Interior.

You will please acknowledge the receipt of this circular.

S. S. BURDETT, *Commissioner*.

No. 468.

CIRCULAR.

Agricultural College Scrip.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE, July 20, 1875.

GENTLEMEN:—Annexed is a copy of an act of Congress approved July 2, 1862, entitled "An Act donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts."

By this act there is granted to the several States, for the purposes and on the conditions therein named—

First. An amount of public lands equal to 30,000 acres for each senator and representative in Congress to which such States are respectively entitled by the apportionment under the census of 1860, the tracts to be selected from the public lands of the United States subject to private entry at \$1.25 per acre, or selections may be made from the \$2.50 or double-minimum; but, in the latter case, the lands are to be computed at the maximum price, and the number of acres proportionally diminished; but no mineral lands are to be selected, and no selections allowed of a quantity less than a quarter section.

Second. Whenever there are public lands in a State of the class contemplated by the act, the quantity to which such State is entitled is required to be selected within the limits of such State. Where there are no public lands in a State, or where there are not sufficient to satisfy the grant, the Secretary of the Interior is required to issue land-scrip in acres to the amount of the deficiency.

Third. Such scrip is not to be located by a State, but to be sold by the State, and located by its assignees upon any unappropriated public lands of the United States subject to private entry at \$1.25 per acre, with a proviso, in section 2, that no location with scrip shall be made before one year from the passage of the act.

The first and second provisos in the said section have been so amended by section 2278 of the Revised Statutes as to allow *pre-emptors* to use the scrip without limit in reference to the quantity located in any one township or State in payment of their claims, *even when the same embrace lands subject to entry at a greater minimum than \$1.25 per acre.* Section 2377 of the Revised Statutes provides that not more than *three sections* in any one township can be entered at private entry by the location of agricultural college scrip.

When such scrip is presented in payment of a *pre-emption claim* composed of lands subject to entry at \$2.50 *per acre*, the pre-emptor, in addition to the scrip surrendered, will be required to pay in cash the difference between the value of said scrip at one dollar and a quarter per acre and that of the tract embraced in his claim; or to file an *additional piece of scrip*: thus, one hundred and sixty acres of double-minimum land may be paid for by the surrender of one piece of scrip and the payment of \$200, or by the surrender of *two pieces of scrip*; and *eighty acres* by the surrender of *one piece of scrip*.

If the value of the scrip should exceed that of the lands entered therewith, the pre-emptor will receive no repayment thereof from the United States; but if the land, at its rated price, should exceed the scrip in value, such excess must be paid by the locator with cash. It will be required also, in the location of a tract subject to entry at a greater

minimum than \$1.25 per acre, that each piece of scrip shall be located upon a *specific subdivision thereof*, and that the excess in area of the land, if any, shall be paid for in cash.

Sections 3, 4, and 5, relating to the conditions and management of the grant, contain matter for the consideration of the States and the Department, to which your attention is not specially called, except—

Fourth. The "fifth" condition of the grant, section 5, by which the *selection of the double minimum* lands is permitted, "*provided they shall be computed to the States at the maximum price, and the number of acres proportionally diminished.*"

Fifth. Section 6 is covered and controlled by the last proviso to section 2, so far as scrip to be *located in a State is concerned*, declaring scrip not locatable in a *State* for one year from the passage of the act; but scrip may be located in a *Territory* after January 1, 1863.

Sixth. Section 7 fixes the fees to land officers under the act, authorizing them to receive the same fees for locating scrip "as is now allowed for the location of military bounty-land warrants;" "*Provided, their maximum compensation shall not be increased thereby.*"

It will be observed that no fees whatever are allowed by the act for *selections made within any State for the use of such State*, but only upon *scrip locations by assignees of a State*, to be paid by locators.

Section 8 merely relates to the duties of governors of States in connection with the grant.

For the information of all concerned, you are advised that, in carrying out the provisions of this act, the following course will be pursued:

Whenever satisfactory evidence shall be furnished that any *State* has accepted the grant in the mode provided by the "seventh" condition, section 5, and such State contains public lands, this Office will issue its certificate, under seal, setting forth the fact, and stating the quantity to which such State may be entitled. Upon the presentation of this certificate by the duly authorized agent of the State at any United States land-office within the State, together with evidence of his authority to make the selections, which must be an appointment by the governor, under the seal of the State, he will be permitted to select the quantity to which the State may be entitled, or any portion thereof, and it will be your duty to afford him every facility for so doing.

The locating agent will file with the Register and Receiver a list of the tracts selected by him, with his application thereto attached to locate said tracts pursuant to the act; and if, on examination, said list shall be found by you to be free from objection—that is, that the selections are of lands subject to private entry at \$1.25 or \$2 50 per acre, and that there is no pre-existing claim thereto, that they do not embrace mineral lands, or other reserved lands, and they are otherwise in conformity to the act—you will cause an abstract of the same to be prepared, certify the facts as above, with the date of selection, (*the date of filing with you the application by the agent being regarded as the date of selection,*) and which date will be regarded as the period of withdrawal of a tract from market.

You will be careful that all cases of selection of \$2 50 or double-minimum lands shall be specially noted in your return, in order that they may be properly charged *at double the area* of the tract in the adjustment of the grant.

The restriction of selections to quantities "not less than one quarter of a section" is not to be understood as forbidding the *selection* of a

legal subdivision or fraction less than a quarter section; but every such legal subdivision or fraction applied for and selected must be charged to the State as a *quarter section*, or 160 acres, in accordance with the established practice of the Department in similar cases.

The selections must be posted in the tract-books in *red ink*, each entry showing the date of location, (application,) and the number and date of General Land-Office special certificate upon which such location was made.

When there are not sufficient public lands in a State to satisfy the grant, the deficit will be made good by scrip, as provided by the 2d section; and when there are no public lands, scrip will be issued for the whole quantity.

No scrip, as shown in the foregoing, will be locatable in any State until July 2, 1863, one year from the passage of the act.

It is the duty of the Register and Receiver, at the close of each month, to make a duly certified return, separate from the returns of ordinary land operations, showing the tracts selected, date, by whom, and certifying the same to be correct.

AN ACT donating public lands to the several States and Territories which may provide colleges for the benefit of agriculture and the mechanic arts.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That there be granted to the several States, for the purposes hereinafter mentioned, an amount of public land, to be apportioned to each State, a quantity equal to thirty thousand acres for each senator and representative in Congress to which the States are respectively entitled by the apportionment under the census of eighteen hundred and sixty: *Provided,* That no mineral lands shall be selected or purchased under the provisions of this act.

SEC. 2. *And be it further enacted,* That the land aforesaid, after being surveyed, shall be apportioned to the several States in sections or subdivisions of sections, not less than one-quarter of a section; and whenever there are public lands in a State subject to sale at private entry at one dollar and twenty-five cents per acre, the quantity to which said State shall be entitled shall be selected from such lands within the limits of such State, and the Secretary of the Interior is hereby directed to issue to each of the States in which there is not the quantity of public lands subject to sale at private entry at one dollar and twenty-five cents per acre to which said State may be entitled under the provisions of this act, land-scrip to the amount in acres for the deficiency of its distributive share; said scrip to be sold by said States and the proceeds thereof applied to the uses and purposes prescribed in this act, and for no other use or purpose whatsoever: *Provided,* That in no case shall any State to which land-scrip may thus be issued be allowed to locate the same within the limits of any other State, or of any Territory of the United States, but their assignees may thus locate said land-scrip upon any of the unappropriated lands of the United States subject to sale at private entry at one dollar and twenty-five cents, or less, per acre: *And provided further,* That not more than one million acres shall be located by such assignees in any one of the States: *And provided, further,* That no such location shall be made before one year from the passage of this act.

SEC. 3. *And be it further enacted*, That all the expenses of management, superintendence, and taxes from the date of selection of said lands, previous to their sales, and all expenses incurred in the management and disbursement of the moneys which may be received therefrom, shall be paid by the States to which they may belong, out of the treasury of said States, so that the entire proceeds of the sale of said lands shall be applied without any diminution whatever to the purposes hereinafter mentioned.

SEC. 4. *And be it further enacted*, that all moneys derived from the sale of the lands aforesaid by the States to which the lands are apportioned, and from the sales of land-scrip hereinbefore provided for, shall be invested in stocks of the United States, or of the States, or some other safe stocks yielding not less than five per centum upon the par value of said stocks; and that the moneys so invested shall constitute a perpetual fund, the capital of which shall remain forever undiminished, (except so far as may be provided in section fifth of this act,) and the interest of which shall be inviolably appropriated by each State which may take and claim the benefit of this act to the endowment, support, and maintenance of at least one college where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to agriculture and the mechanic arts, in such manner as the legislatures of the States may respectively prescribe, in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life.

SEC. 5. *And be it further enacted*, That the grant of land and land-scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions hereinbefore contained, the previous assent of the several States shall be signified by legislative acts:

First, If any portion of the fund invested, as provided by the foregoing section, or any portion of the interest thereon shall, by any action or contingency, be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital of the fund shall remain forever undiminished; and the annual interest shall be regularly applied without diminution to the purposes mentioned in the fourth section of this act, except that a sum not exceeding ten per centum upon the amount received by any State under the provisions of this act may be expended for the purchase of lands for sites or experimental farms, whenever authorized by the respective legislatures of said States.

Second. No portion of said fund, nor the interest thereon, shall be applied, directly or indirectly, under any pretense whatever, to the purchase, erection, preservation, or repair of any building or buildings.

Third. Any State which may take and claim the benefit of the provisions of this act shall provide, within five years, at least not less than one college, as described in the fourth section of this act, or the grant to such State shall cease; and said State shall be bound to pay the United States the amount received of any lands previously sold, and that the title to purchasers under the State shall be valid.

Fourth. An annual report shall be made regarding the progress of each college, recording any improvements and experiments made, with their cost and results, and such other matters, including State industrial and economical statistics, as may be supposed useful, one copy of which shall be transmitted by mail free, by each, to all the other colleges

which may be endowed under the provisions of this act, and also one copy to the Secretary of the Interior.

Fifth. When lands shall be selected from those which have been raised to double the minimum in price, in consequence of railroad grants, they shall be computed to the States at the maximum price, and the number of acres proportionally diminished.

Sixth. No State while in a condition of rebellion or insurrection against the Government of the United States shall be entitled to the benefit of this act.

Seventh. No State shall be entitled to the benefits of this act unless it shall express its acceptance thereof by its legislature within two years from the date of its approval by the President.

SEC. 6. *And be it further enacted,* That land-scrip issued under the provisions of this act shall not be subject to location until after the first day of January, one thousand eight hundred and sixty-three.

SEC. 7. *And be it further enacted,* That the land officers shall receive the same fees for locating land-scrip issued under the provisions of this act as is now allowed for the location of military bounty-land warrants under existing laws: *Provided,* Their maximum compensation shall not be thereby increased.

SEC. 8. *And be it further enacted,* That the governors of the several States to which scrip shall be issued under this act shall be required to report annually to Congress all sales made of such scrip until the whole shall be disposed of, the amount received for the same, and what appropriation has been made of the proceeds.

Approved, July 2, 1862.

The following sections of the Revised Statutes refer to the application of agricultural college scrip in the entry of public lands: [Sections 2238, 2278, 2377.]

An Act to authorize the the issue of duplicate Agricultural Land-Scrip where the original has been lost or destroyed. (No. 629.)

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of the act of Congress of the twenty-third day of June, eighteen hundred and sixty, relating to the re-issue of land warrants in certain cases, be, and the same are hereby, extended so as to include the re-issue of agricultural college land-scrip lost, canceled, or destroyed without the fault of the owner thereof, under such rules and regulations as the Secretary of the Interior may prescribe.

Approved, June 20, 1874. (Part II., No. 116.)

The act of Congress approved June 23, 1860, referred to in, and made a part of, the said law of June 20, 1874, is as follows, viz :

An Act to authorize the re-issue of land warrants in certain cases, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever it shall appear that any certificate or warrant, issued in pursuance of any law of the United States granting bounty land, has been lost or destroyed, whether the same had been sold and assigned by the warrantee or not, the Secretary of the Interior shall be, and he is hereby, authorized and required to cause a new certificate or warrant of like tenor to be issued in lieu thereof; which new certificate or warrant may be assigned,

located, and patented in like manner as other certificates or warrants for bounty land are now authorized by law to be assigned, located, and patented; and in all cases where warrants have been or may be re-issued, the original warrant, in whose hands it may be, shall be deemed and be held to be null and void, and the assignment thereof, if any there be, fraudulent; and no patent shall ever issue for any land located therewith, unless such presumption of fraud in the assignment be removed by due proof that the same was executed by the warrantee in good faith and for a valuable consideration.

SEC. 2. *And be it further enacted*, That the said Secretary of the Interior shall be, and he is hereby, authorized and required to prescribe such rules and regulations for carrying this act into effect as he may deem necessary and proper in order to protect the Government against imposition and fraud by persons claiming the benefit of this act; and all laws and parts of laws for the punishment of false swearing and frauds against the United States are hereby made applicable to false swearing and frauds under this act.

Approved, June 23, 1860. (12 Stats., p. 90.)

To carry into effect the said acts so far as the same relate to agricultural college land-scrip, the following rules and regulations are prescribed:

1st. Whenever any piece of such scrip has failed to reach the hands of the party entitled to receive it, and to whom it was sent, or has been lost, canceled, or destroyed without the fault of the owner thereof, after having been received, in order to prevent the issuing of a patent to a fraudulent holder of the same, the actual owner must at once file in this Office a caveat, in the form of an affidavit, duly authenticated, setting forth the nature of his title to the scrip, and the particulars as to its loss, cancellation, or destruction, and giving his post-office address.

2d. The applicant must give public notice of the facts in the case, at least once a week for six successive weeks, in some newspaper of general circulation published at or nearest the place to which the scrip was directed, or where the loss, cancellation, or destruction occurred. In such publication (a copy of which must be furnished, with the affidavit of the publisher as to its due appearance) the intention must also be expressed of applying to the Commissioner of the General Land-Office for a re-issue of such scrip, which must be described by number, and the name of the State given to which the same was issued.

3d. The filing of the caveat and the advertisement of the loss, cancellation, or destruction being only preliminary steps toward the observance of these regulations, the owner of such scrip must file, as soon after the discovery of such accident as practicable, his declaration, under oath and duly authenticated, setting forth fully and distinctly the time, place, and circumstances of the loss, cancellation, or destruction, and that he has never sold, assigned, nor voluntarily alienated his right in and to the same.

4th. In cases where a re-issue of scrip is claimed on the ground of the non-receipt of the original thereof, the agent or person to whom it was transmitted must unite with the claimant, or make a separate affidavit as to its non-receipt.

5th. If the applicant for the re-issue is not the person to whom the scrip was originally assigned by the proper State authorities, but claims

to be the owner thereof by subsequent purchase for a valuable consideration, he must give the name and residence of the original assignee, the name and residence of the party of whom he purchased, and, as far as he may know or can ascertain, the name and residence of each of the several assignors through whom the title to the scrip was conveyed to him from the original assignee, and *produce satisfactory evidence in proof of each and all his statements in reference thereto.*

6th. Whenever the applicant establishes a *satisfactory title* to the scrip for which a re-issue is claimed, and such re-issue shall be made, a certificate will be indorsed thereon, signed by the Commissioner of the General Land Office, that the claimant is entitled to assign or locate the same; such transfer to be made in the same manner and form as military bounty-land warrants are authorized by existing laws and regulations to be assigned.

7th. The identity of the claimant must be satisfactorily established, and the credibility of every affiant must be duly certified to by the magistrate administering the oaths, and his official character and signature must be shown by the certificate of the clerk of the proper court or county, under the seal thereof.

No scrip will be re-issued until after the expiration of three (3) months from the date of the filing of the application therefor in this office, and not then if it shall appear that the original scrip is in existence and uncanceled. (Circular of September 16, 1874)

S. S. BURDETT, *Commissioner.*

V. JUDICIAL DECISIONS.

OREGON.

Prior to the 27th September, 1850, a settler on the public lands in Oregon held a mere possessory right, which ceased with his occupation; he had no interest which he could incumber, or transfer to another. *Lownsdale v. City of Portland*, 1 Oregon, 381. S. C., 1 Dedy 1. *Chapman v. School District*, Ibid., 108.

CALIFORNIA.

The act of 17th March, 1866, declaring lands of the City of San José "not hitherto disposed of by ordinance," etc., to be vested in the corporate authorities of the city, in trust for the use and benefit of the public schools, did not operate as a confirmation of the previous sheriff's sale of lands in that city, attempted to be made under the ordinance of 16th November, 1851. *La Roy v. Chabolla*, 2 Ab. C. C. 448.

The title of the city of San Francisco to her public lands, rests upon the decree of the Circuit Court, as modified by the act of Congress of 8th March, 1866 *Montgomery v. Bevans*, 1 Saw., 653.

The claim of the city, as successor of the pueblo, to her municipal lands, was founded upon the general law of Mexico. Ibid

The act of 1864 passed the entire title of the United States to the

city, subject to the right to resume certain parcels, upon the designation of the President, within a certain period; the titles conferred by the Van Ness ordinance thereby became perfect legal titles. *Ibid.*

Construction of the acts for the sale of swamp lands in California. *O'Neal v. Kirkpatrick*, 5 Wall., 791.

They did not authorize the sale of salt-marsh lands within five miles of San Francisco. *Ibid.*

SCHOOL LANDS.

Lands reserved for school-purposes by the act of 13th June, 1812, after being designated and set apart by the Surveyor-General, in pursuance of subsequent legislation vested in school commissioners appointed by the State legislature. *Kissell v. St. Louis Public Schools*, 18 H., 19.

The Surveyor's certificate was record evidence of title. *Ibid.*

When lands are surveyed and marked out, the title of the State attaches to section sixteen for the use of schools. *Cooper v. Roberts*, 18 H., 173. S. C. 6 McL., 93.

Such title attaches, although section sixteen may embrace mineral lands. *Ibid.*

The State may dispose of her school lands, without obtaining the consent of Congress. *Ibid.*

One claiming under an adverse title, cannot raise the question of the regularity of the sale under the State laws. *Ibid.*

So that the proceeds of the sixteenth section of public lands be not diverted from the use of the inhabitants of the township, they may properly be estimated by the State authorities, in equalizing the appropriations for school purposes. *Springfield Township v. Quick*, 22 H., 56.

Lands reserved in a Territory for the use of a seminary of learning, and duly located, vest in such seminary when incorporated by the Territorial legislature, and do not pass to the State on its admission into the Union. *Vincennes University v. Indiana*, 14 H., 268.

The reservation of land in a Territory for school purposes is not such a complete dedication of them that Congress may not subsequently, with the assent of the territorial legislature, bring them within the terms of the pre-emption law. *Minnesota v. Bachelder*, 1 Wall., 109.

Under the act of 20th May, 1826, the decision of the Secretary of the Treasury, on a contest between school trustees and one claiming under a private entry, as to whether the land in question had been duly selected and set apart for school purposes, is final. *Campbell v. Doe*, 13 H., 244.

A grant for school purposes, in 1820, will prevail over an imperfect Spanish title, rejected by a board of commissioners, in 1811, but subsequently confirmed, in 1828. *Ham v. Missouri*, 18 H., 126.

The act 27th January, 1831, (4 Stat., 535,) relinquished to the State of Missouri, the lots, etc., reserved for the use of schools, by the act 13th June, 1812, (1 Bright. Dig., 551,) and nothing else; the latter act excluded all lots "rightfully claimed by private persons," and the report of the Board of Commissioners, under the act 9th July, 1832, (4 Stat., 565,) in favor of such claim, and its confirmation by Congress, is evidence that it was lawful. *Public Schools v. Walker*, 9 Wall., 282.

TITLE VI.—PRIVATE LAND CLAIMS.

FRENCH, SPANISH AND MEXICAN GRANTS.

I. IN FLORIDA AND LOUISIANA.

No. 469.

DANIEL CLARK.

Patents for Private Land Claims issued to the conferee, or his legal representatives, which term includes heirs, devisees and assignees.

Jurisdiction of the old Board of Commissioners in Louisiana under acts of 1805, 1806, and 1807 considered.

Perfect titles stand confirmed by the treaty of 1803. Spanish grants made after 1782 within the territory east of the Mississippi and north of 31° north latitude have no intrinsic validity.

A decree, order, or warrant of survey, even when executed, gave only an equitable or inchoate right, which right before cession was subject to descent, or transfer, and could be sold for debt. A confirmation inured to the benefit of an assignee, even where a sale was made before confirmation and subsequent to the appearance of the original claimant before the Board.

A *titulo in forma*, or complete title, was never issued by the King's deputy except upon an official survey.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., January 5, 1871.

SIR:—On taking charge of this Department I found among its unfinished business your communications, bearing date respectively the 18th day of August and the 21st day of October, transmitting reports from the surveyor general of Louisiana upon the survey of claim numbered 104. (American State Papers, Duff Green's edition, volume 2, page 265.)

In looking into the correspondence on the subject, I perceive by your letter of the 10th January last that, without expressing any opinion upon the survey, you presented for the approval of my predecessor the draught of a patent founded upon and conforming to it, conveying in fee to Daniel Clark or his representatives the lands included within its lines, amounting to 3,456.92 acres. You informed him that there were not on file in your office any papers relating to the claim save those which accompanied your letter. He, in writing to you on the 19th of that month, referred to this fact and to the statement in the *proces verbal* accompanying the survey. He considered, with evident propriety, that certain documentary evidence specifically mentioned should be produced, and he directed you to instruct the surveyor general not

only to obtain it, but also to report to what extent the survey covered tracts embraced by other claims, and to communicate such other information as would enable the Department to act with a full knowledge of all the facts essential to a just decision of the questions involved. Pursuant to this direction of the Secretary, you corresponded with the surveyor general, and the reports are now before me in connection with your letters, for my consideration and final action.

The following is the entry in No. 104, in said State papers :

Daniel Clark claims a piece of land in the city of New Orleans, containing nineteen hundred and twenty toises square, bounded on the upper side by vacant land, and on the lower by the city of New Orleans aforesaid.

It appearing to the board, from a royal order of the court of Spain, dated Madrid, 23d May, 1791, that said land was thereby granted to Elisha Winter; and it appearing to the board, from sundry deeds of conveyance, that said land has been transferred to the present claimant, the board do therefore confirm him in his claim aforesaid.

The papers transmitted and described by the surveyor general are as follows :

1. A copy of the official translation of the original grant of the governor general to Elisha Winter, including the *proces verbal* of the survey made by Trudeau, the surveyor of the province.

2. Copy of the original document from Don Francis Louis Hector, Baron of Carondelet, etc., making a grant to Winter, to indemnify him for taking for public uses a part of the land granted by Governor Miro in 1791. This consists of a patent, a *proces verbal* of the then surveyor of the province, and a plat distinctly representing the location and extent of the land surveyed.

3. Copy of the second indemnity grant to Winter, given to him for buildings removed to make way for the fortifications, the first having been given as indemnity for the land only.

4. Copy of a copy of claim No. 104, it appearing by the indorsements on the original that it was submitted to the board of commissioners, and confirmed and entered on "record No. 1, folio 506," which document clearly defines the limits of claim No. 104. (The original copy is on file in the surveyor-general's office.)

5. Copy of a page from book "D" of Surveyor General Lafon's surveys, showing the location of the commons which the city claimed at that date.

6. Another page from the same book.

7. A list of documents abstracted from the archives of the office of the surveyor general of Louisiana prior to their coming into his possession, and which have not been recovered, except the papers relating to the claim No. 104.

8. Certified copy of a map by Trudeau of the city of New Orleans as it was in 1793.

9. The pamphlet of Messrs. Bradford.

10. Copies of three letters written to the mayor and aldermen of New Orleans by Daniel Clark, while he was a delegate in Congress from the Territory of Louisiana.

11. Copy of a map of the city of New Orleans as it was in 1802, purporting to be made by the then surveyor general, the authenticity of which is certified by the present surveyor general.

I have examined all the documents with as much care and attention as other imperative engagements permitted. I have considered the views and arguments of the counsel of Mrs. Myra Clark Gaines in support of the survey. I now proceed to give a statement of the facts, and an opinion upon the question submitted.

Before doing so I premise that is not my province to pass upon the asserted rights of Mrs. Gaines, as the heir or devisee of Daniel Clark, deceased. According to the settled practice of your office, sanctioned by a former Attorney General, the patent issues in the name of the orig-

inal confirmee or "his legal representative." This formula embraces representatives by contract as well as by operation of law. (*Hogan v. Page*, 2 Wallace, 605.) The patent will inure to the benefit of heirs, devisees, or assignees, and all questions relating to the derivative title are left open to judicial inquiry.

It appears that on the 23d day of July, 1791, Charles Trudeau, surveyor of the province of Louisiana, surveyed and measured, pursuant to an order of Governor Miro, a tract of land in favor and in presence of Elisha Winter. It was one hundred feet in front and six hundred feet in depth, situate to the southeast corner of New Orleans, at sixty feet distance from the angle of the powder magazine, as indicated upon the plan by the lines A, B, C, D, and that Governor Miro issued a patent, bearing date 22d day of December, 1791, wherein, setting forth that, after examining the foregoing procedure, "concerning the possession given by him to the rope-maker Elisha Winter of a tract of land one hundred feet in front and six hundred in depth, situated in this capital, conformably to the royal order given the 23d of March of the present year," he granted the said tract to Elisha Winter. A portion of this land was afterward appropriated as a site for the fortifications of the city, and is distinctly shown on the certified copy of the plat. On a subsequent occasion, to indemnify Winter for the appropriation of these lands to public uses, and for buildings which were destroyed, a survey of additional lands was made, pursuant to a decree of the governor general, dated April 30, 1794. The *proces verbal* recites that the surveyor proceeded to examine the land claimed by said Winter, being 200 toises in length and 50 in width, and also a piece of land on the corner of Royal and Custom-house streets, and having examined the lands formerly occupied by the rope-walk, we proceeded to measure and mark the limits of the rest of the lands occupying the distance between the curtain and the lands conceded to the individuals whose names appear upon the plan, having for this purpose established a parallel line and at thirty feet in distance from the palisade of the curtain of communication from Fort St. Louis to that of Burgundy, it being the line represented on the plan with the letters F, S, of 210 toises long, terminating in the point S, at thirty feet distance from the aforesaid palisade and above the upper prolongation of Dauphine street, while all the red lines represented by the letters F, E, H, J, V, T, N, O, P, Q, R, S, are equivalent to the fifty feet in width by the 200 toises in length, claimed by the rope-maker; the land V, L, M, T, can likewise be added to indemnify the proprietor for having demolished his buildings to move them from their original situation. The lands complete a total superficies of 1,920 square toises of superficies, (*toises quadradas de superficie*;) that this may appear, the certificate was granted with the figurative plan annexed. The certificate is dated May 20, 1794, and on the plan are delineated the boundaries of the tract with the utmost precision, so that they can be identified with unmistakable certainty. Governor Carondelet gave a patent on the 23d of that month, as follows:

In view of the foregoing proceedings performed by the surveyor of this province, Charles Trudeau, upon the possession which he gave to the rope maker, Elisha Winter, in conformity to the royal order of his Majesty, dated the twenty-third day of March, (May,) of the year 1791, of the quantity of nineteen hundred and twenty square toises of land, (*toises de tierra quadradas*;) situated in the upper part of this city, at thirty feet distance from the palisade of the curtain of communication from the redoubt St. Louis to the redoubt of Burgundy, and bounded on the side of the city by different tracts

of the citizens thereof, as is fully laid down upon the annexed drawn plat, and observing the rules of the surveying system, as appears from the operations detailed in the said plat, approving them as we approve them, using the faculty which the king confers upon us, we give to the aforesaid Elisha Winter, in his royal name, the said nineteen hundred and twenty square toises of land (*toesas de tierra cuadradas*), that he may make proper disposition of the same and render the same productive, governing himself by the above-mentioned proceedings, and observing the conditions prescribed for the regulation of the business.

The patent is in the usual form where an absolute title is given, as distinguished from an order of survey or first concession.

The *proces verbal* and figurative plan and Carondelet's patent were, on the 28th February, 1806, entered upon the record by J. W. Gurley, register of the land office at New Orleans; and it further appears, by a certificate of J. Stelle, clerk of the board of commissioners, that they were examined and confirmed by the board, before whom also a deed from Richard Clark to Daniel Clark, with other conveyances, was presented.

The deed is as follows, bearing date March 28, 1800:

Be it known to all men by these presents, That I, Richard Clark, a resident of this city, stipulate to sell to Daniel Clark, of this community and city, the moiety of a ropewalk, composed of a thousand nine hundred and twenty square toises of land, (*compuesta de mil nuevecientas y veinte toesas de tierra cuadradas*), situate in the upper part of this city, at thirty feet of distance from the palisade of the curtain of communication extending from St. Louis redoubt to that of Burgundy, bounded on the side of this city by lands of different individuals of the city, with the moiety of the buildings within it, and also four negroes, Tom, Sammy, Sam and Adam, all of which being lawfully my property, I having purchased the moiety of the ropewalk and the three first named slaves from John Turnbull, executor and partner of the deceased John Joyce, as appears by a deed recorded in these archives on the 12th of March of last year, and the last slave through my having purchased him in the island of Jamaica in the year 1789, I sell the aforesaid moiety of the ropewalk, buildings and all other things found in it, with all its ingresses and egresses, uses and customs, rights and servitudes, and the captives as slaves to serve as they are, and all free from mortgage, as the present notary certifies, valued in the sum of seven thousand dollars, *fuertes*, that I have received from the vendee in ready money to my satisfaction.

The remainder of the deed is not material. The *proces verbal* and figurative plan of Trudeau's survey, recorded by the proper officer and considered by the board, constitutes a part of the record of their proceedings in case No. 104, and threw an important light upon the matters presented.

Counsel referred very fully to the treaty by which the United States acquired the then province of Louisiana, and to several of the acts of Congress in execution of its provisions. Differing in several essential particulars from the views which he urged with his characteristic ability and zeal, I think it proper to state my own deliberate and carefully considered opinion upon the questions which he discusses.

The province of Louisiana was ceded by the King of Spain to the Republic of France by the treaty of St. Ildefonso, concluded on the 1st of October, 1800, and by the latter power to the United States by the treaty concluded at Paris, 30th April, 1803. France did not, however, take possession of the province until the 30th day of November of that year and on the 20th of the following month she formally delivered it to the United States.

The first article of the treaty makes the cession. By the second it is provided that "in the cession made by the preceding article are in

cluded the adjacent islands belonging to Louisiana, all public lots and squares, vacant lands, and all public buildings, fortifications, barracks and other edifices which are not private property;" and the third article stipulates that "the inhabitants of the ceded territory shall be incorporated in the Union of the United States and admitted as soon as possible, according to the principles of the Federal Constitution, to the enjoyment of all the rights, advantages, and immunities of citizens of the United States; and in the meantime they shall be maintained and protected in the free enjoyment of their liberty, property, and the religion which they profess."

Congress, the 20th of March, 1804, erected the ceded province into two territories. The territory of Orleans now constitutes the State of Louisiana. The remainder of the province was called the district of Louisiana. Congress, on the 2d of March, 1805, initiated legislation for ascertaining and adjusting claims to lands within that territory and that district.

The first section of that act provides that any person or persons who, on the first day of October, 1800, were resident within the territories ceded by the French Republic to the United States, by the treaty of 30th April, 1803, and who had, prior to the said 1st day of October, 1800, obtained from the French or Spanish governments, respectively, during the time either of the said governments had the actual possession of said territories, any duly registered warrant or order of survey for lands lying within the said territories to which the Indian title had been extinguished, and which were, on that day, actually inhabited and cultivated by such person or persons, or for his or their use, should be confirmed in their claims to such lands in the same manner as if their title had been completed. The second section provided that to every person who, being either the head of a family or 21 years of age, had, prior to the 20th day of December, 1803, with the permission of the proper Spanish officer, and in conformity with the laws, usages and customs of the Spanish government, made an actual settlement on a tract of land within the said territories, not claimed by virtue of the first section or of any Spanish or French grant made and completed before the said 1st day of October, and during the time the government which made the grant had the actual possession of the territories, and who did, on the said 20th day of December, actually inhabit and cultivate the said tract of land, the tract thus inhabited and cultivated should be granted. The two provisos are not material in this connection. The third section provides that, for the purpose of more conveniently ascertaining the titles and claims to lands in the territory ceded as aforesaid, the territory of Orleans should be laid off in two districts, in each of which should be appointed a register. The fourth section provides that every person claiming lands in the above-mentioned territories by virtue of any legal French or Spanish grant, made and completed before the 1st day of October, 1800, and during the time the government which made such grant had the actual possession of the territories, *may*, and every person claiming lands in the said territories by virtue of the two first sections, or by virtue of any grant, or incomplete title bearing date subsequent to the 1st day of October, 1800, *shall*, before the 1st day of March, 1806, deliver to the register of the land-office within whose district the land may be, a notice in writing, stating the nature and extent of his claims, together with a plat of the tract claimed; and shall also, on or before that day, deliver to the register, for the purpose of being

recorded, every grant, order of survey, deed, conveyance, or other written evidence of his claim, and the same should be recorded by the register in books to be kept for the purpose; provided, however, that where lands are claimed by virtue of a complete French or Spanish grant as aforesaid, it shall not be necessary for the claimant to have any other evidence of his claim recorded except the original grant or patent, together with the warrant or order of survey and the plat; but all the other conveyances or deeds shall be deposited with the register, to be by him laid before the commissioners appointed under the act, when they shall take the claim into consideration. The fifth section prescribes the duties of the commissioners, among which was to demand and obtain from the proper officer or officers all public records in which grants of land or orders of survey, or any other evidence of claims to land, derived from either the French or Spanish governments, may have been recorded; to take transcripts of such records or any part thereof; to have access to all other records of a public nature relative to the granting, sale, transfer, or titles of lands within their respective districts; and to decide, in a summary way, according to justice and equity, on all claims registered in conformity with the act, and on all complete French or Spanish grants, the evidence of which, though not thus filed, may be found of record on the public records of such grants; which decision shall be laid before Congress in the manner thereafter directed, and be subject to their determination thereon. It was made the duty of the commissioners, by their clerk, to enter in a book full and correct minutes of their proceedings and decisions, together with the evidence upon which such decisions were made, which books shall be deposited in the office of the register of the land-office of the district; and the clerk was to prepare two transcripts of all the decisions made by the commissioners in favor of the claimants to land, one of which is to be transmitted to the officer exercising in the district the authority of the surveyor general, and the other to the Secretary of the Treasury.

The act of 28th February, 1806, (2 Stat., 352,) provides that the commissioners appointed for the territory of Orleans should be authorized to direct the officers exercising the powers of surveyor general to execute such surveys as they may think necessary for the purpose of deciding on claims presented for their decision, and provides that the expense of executing the surveys should be defrayed by the parties claiming the land, unless the same be claimed by a legal French or Spanish grant made before the 1st day of October, 1800.

By an act supplementary to the original act of March, 1805, approved April 21, 1806, (2 Stat., 301,) the time fixed by the original act for delivering to the register notice in writing and the written evidences of claim was extended until the 1st day of the then following January, and made other provisions, to which I need not here refer.

The act of 3d March, 1807, (2 Stat., 440,) provided, among other things, that the time fixed for delivering notice in writing and written evidences of claims should be extended until the 1st day of July, 1808, and the 4th section provided that the commissioners appointed should have full power to decide, according to the laws and established usages and customs of the French and Spanish governments, upon all claims to lands within their respective districts where the claim is made by any person or persons who were, on the 20th day of December, 1803, inhabitants of Louisiana, and for a tract not exceeding the quantity of acres contained in a league square, and which does not include either a lead mine or

salt spring; which decision of the commissioners, when in favor of the claimant, shall be final against the United States, any act to the contrary notwithstanding. The 6th section provided that the commissioners should transmit to the Secretary of the Treasury and to the surveyor general of Louisiana, or officer acting as such, transcripts of the final decisions made in favor of claimants by virtue of that act, and they should deliver to the party a certificate stating the circumstances of the case, and that he is entitled to a patent for a tract of land therein designated, which certificate shall be filed with the register within twelve months after date, and the register should thereupon (a tract of the plat of land being previously filed with him, or transmitted to him by the officer acting as surveyor general) issue a certificate in favor of the party, which certificate, being transmitted to the Secretary of the Treasury, should entitle the party to a patent. The 7th section provides that the commissioners should be authorized, whenever they might think it necessary, to direct the surveyor general, or officer acting as such, to cause any tract of land already duly surveyed to be resurveyed at the expense of the United States; and in all cases where an authenticated plat of the land surveyed under the authority of the officer acting as surveyor general under the French, Spanish, or American governments respectively, during the time the said governments had the actual possession of the territory of Orleans, shall not have been filed with the proper register, or shall not appear of record on the public records of the territory, such land shall be surveyed at the expense of the parties, under the direction of the surveyor general.

The commissioners were not authorized to confirm finally any claims except of the class mentioned in the 4th section. On them their decisions against the United States were final and conclusive. Their authority did not extend to a title perfected under the laws of the former government prior to the 1st of October, 1800. The Secretary of the Treasury, 30th March, 1805, referring to the act of 1805, in his instructions to J. W. Gurley, esq., in transmitting him his commission as register of the land office of the eastern district of Orleans, which included all that part of the territory east of the Mississippi, with all the parishes lying on the west bank and bordering on the same, and including the Fourche, remarked as follows:

For the present I will call your attention only to one part of the law. It is enacted by the fourth section that persons claiming lands by virtue of legal French or Spanish grants, made before the 1st of October, 1800, *may* file a notice of their claim with the register; but that persons claiming either under the first two sections of the act, or under incomplete titles, *shall* do it under penalty of their claim being forever barred. You will easily perceive that the distinction is drawn from the different nature of the claims; that the first species is considered as already established, and not wanting any confirmation from the Government of the United States; but it is necessary that the people should be also made to understand it; that they should know that it is not intended to disturb their rights founded on legal grants, and that the object of that first paragraph is merely to enable them to have their grants recorded in an American office, if they shall think it expedient, and to prevent the possibility of the United States selling, through mistake, lands which have already been legally granted.

It is true, that persons claiming lands under complete grants, dated after the 1st of October, 1800, are included in the same class with persons who claim under incomplete titles; and that there may exist some cases in which such grants are not confirmed by the first two sections of the act. (Public Laws, &c., vol. 2, p. 667.)

Subsequent laws enlarged the power of the board, and were enacted in a more liberal spirit to claimants under the former governments, but made no change in regard to the matters mentioned in the Secretary's letter. Chief Justice Taney remarks, in *Burgess v. Gray*, 16 Howard, 48, that the act of 1807 enabled the holders of *inchoate titles* to obtain patents. Even so late as the last term of the Supreme Court, in *Maquire v. Tyler*, 8 Wallace, 650, it was held that "complete titles to the land ceded by France to the United States needed no legislative confirmation." *United States v. Wiggins*, 14 Peters, 334, was cited, wherein Justice Catron held that perfect titles, made before the 24th January, 1818, by Spain, within the territory ceded by the treaty of 1819, were intrinsically valid, and needed no sanction from the legislative or judicial departments of the country.

The act of 26th May, 1824, to enable claimants to lands in Missouri to try the validity of their claims, subsequently revived and extended to Louisiana, is commented upon by counsel. It gave authority to the district court to investigate claims to land by virtue of any French or Spanish grant, concession, warrant, or order of survey, legally made and issued before March 10, 1804, &c. The Supreme Court, in interpreting it, have uniformly held that they had no jurisdiction under it when the titles were complete and legal, but that such titles were to be sued in the usual form under the laws and practice of the State. Mr. Chief Justice Taney, *Fremont v. United States*, 17 Howard, 542, in commenting upon the eighth section of the act of 3d March, 1851, to ascertain and settle land claims in California, remarks that "it embraces not only *inchoate* or equitable, but legal titles also, and required them to undergo examination and be passed upon by the court." He then said:

In this respect it differs from the act of 1824, under which the claims in Louisiana and Florida were decided. The jurisdiction of the court in these cases was confined to *inchoate equitable titles*, which required some other act of the Government to vest in the party the legal title or full ownership. If he claimed to have obtained from either of the former governments a full and perfect title he was left to assert it in the ordinary forms of law, upon the documents under which he claimed. The court had no power to sanction or confirm it when proceeding under the act of 1824, or the subsequent laws extending its provisions.

And the language of the court, in passing judgment upon the claims in Louisiana or Florida, must always be understood as applying to cases in which the Government still held the ownership of the land, and where the right of the party to demand a conveyance upon principles of equity and good faith must be shown by him before he could claim it from the United States.

It is thus the settled doctrine that perfect titles stood confirmed by the treaty of 1803. The rule is different with regard to Spanish grants, made after the peace of 1782 between this country and England, within the territory east of the Mississippi and north of the 31st degree of north latitude. They have no intrinsic validity, and the holders must depend exclusively upon the laws of the United States, for the Spanish authorities were wrongfully, and against our earnest protest, in possession of the territory. (*Henderson v. Poindexter*, 12 Wheaton, 530.)

A decree, order, or warrant of survey, even when executed, gave the party but a mere equitable right. Such a right was, before the cession, the subject of descent or transfer, and could be sold for the payment of debts. In Louisiana a petitory action could be maintained, and by special statute in Missouri ejectment would lie to recover possession

of the property covered by such survey. If the original claimant appeared before the board, and afterward, but before a confirmation, the land was sold or conveyed, the confirmation inured to the benefit of the assignee. (*Stoddard v. Chambers*, 2 Howard, 316; *Bissell v. Penrose*, 8 Howard, 317; *Landers v. Brant*, 10 Howard, 348.) Notwithstanding this species of right upon a *requete*, a preliminary concession, survey, and possession under it, the party was not the absolute owner; without the further act of the King's deputy, the title still continued in the Crown. This act was the granting of complete title, *titula informis*. This was never issued except upon an official survey itself, in which the courses and distances, and natural and artificial boundaries, were fully set forth.

When the Government acquired the province of Louisiana in full property, sovereignty, and dominion, she put herself in the place of the former governments, and became invested with all their rights, subject to the concomitant obligations to the inhabitants. As remarked by Chief Justice Marshall, in a leading case cited by counsel, "the people change their allegiance, their rights to each other, and the rights of property remain undisturbed." And the Supreme Court has declared that the word property comprehends "any right, legal or equitable, inceptive, inchoate, or perfect, which, before the treaty with France in 1803, had so attached to any piece of land, great or small, as to affect the conscience of the former sovereign with a trust, and make him a trustee for an individual, according to the law of nations, of the sovereign himself, the local usage or custom of the colony or district, according to the principles of justice and rules of equity." (12 Peters, 410, and the authorities there cited.)

While by the third article of the treaty the inhabitants of the ceded territory were entitled to be maintained and protected in the free enjoyment of their property, yet Mr. Justice Catron, in *Menard's Heirs v. Massey*, (8 Howard, 293,) inquires, "in what property?" and adds:

To such an interest in it, if land, as they had when the country changed owners, and that interest being of a character requiring royal sanction before the Spanish government would recognize it as divesting the public title, our Government, as the successor of Spain to the public lands, gave the same construction and effect to concessions and orders of survey, holding that the title of the King's domain passed by treaty to the United States, notwithstanding the existence of such concessions. Yet, to the full extent of any equity in the claimants, the Government adopted means to satisfy the claims; and as the sovereign power could not be sued as legal owner, boards of commissioners were created, with liberal powers, to investigate every description of claims, and report on them to Congress for the sanction of sovereign authority; and by this means many claims were confirmed, the legal title added, and incipient concessions completed into perfect and conclusive titles against the Government. Then again, Congress provided that special courts should be organized, in which the Government might be sued in a prescribed form, and decrees be made for or against claimants; but no suit could be maintained in an ordinary action of ejectment or for title of any kind, on a concession and an order of survey, for want of legal title to sustain it. Such claimants were not regarded "as owners of land until the real title was delivered completed," in the language of the Spanish regulation, No. 18.

The learned Justice refers to the doctrine that in ejectment the party must recover upon his legal title. That remedy has been modified by statute in many of the States. The Spanish regulation to which he adverts was one of a number published by Morales. It was only declaratory of the previous existing law of the province. The 12th of O'Reilly's

regulations of the 18th February, 1770, provided that grants should be made in the name of the King by the governor-general of the province, who should appoint the surveyor to fix the boundary both in front and depth. The surveyor was to make three copies of the survey, one to be deposited in the office of the scrivener of the government, one to be delivered to the governor-general, and the third to the proprietor, to be annexed to the title of his grant. Carondelet's patent being in conformity to regulations then in force, gave Winter an absolute and consummated title to the tract therein described. No interest therein nor right thereto remained in the Crown, and none passed to the United States. No action by any branch of the Government was necessary to give it validity. The action of the board in No. 104, therefore, amounted to nothing more than an official recognition by the authorized agents of the Government of the complete title of Daniel Clark, who, by sundry conveyances, became the proprietor of the tract. It neither conferred new nor enlarged previous rights, and Clark might have asserted his title upon the original papers as fully and effectually as if your office had issued a patent.

It was suggested by counsel, in course of the argument, that the government had no authority to make perfect titles. This is an evident misapprehension, for under the royal decree of the 24th of August, 1770, the civil and military governors of Louisiana were empowered to make such titles to lands belonging to the Crown, and it continued in force until the 22d day of October, 1798, when the King vested that power exclusively in the intendant of the provinces of Louisiana and West Florida, and in consequence thereof Morales issued on the 17th day of July, 1799, regulations to which all concessions of land should thereafter be subjected. (*United States v. Moore*, 12 Howard, 209; *American State papers*, Public Lands, Gales & Seaton's edition, vol. 3, p. 487.)

I have referred to the statutes and authorities, inasmuch as counsel assumed that, under the treaty and the acts of Congress, there was, prior to 1824, a necessity for the confirmation of all grants, whether perfect or imperfect.

The only remaining question, in this connection, relates to the identity of the lands upon which the action of the board in No. 104 was had, and those conveyed by Carondelet. The papers conclusively establish that the lands are the same. I have no doubt upon this point, and shall refer to the entry by the board in a subsequent part of this opinion.

If Winter, or Clark claiming under him by sundry conveyances, had but an imperfect title, the board, under the acts of 1805-'6, had no power to make a conclusive adjudication, but under the act of 1807, their decision, in cases falling within the 4th section, was final against the United States without further action of Congress. The Secretary of the Treasury, under date of 2d April, 1807, (*Land Laws, &c.*, vol. 2, p. 69,) in speaking of the form of the certificate to be issued by the board to a claimant, stated that—

Each certificate should specify the name of the original claimant and the present owner, the nature of the claim, (whether settlement right, Spanish order of survey, &c.,) and the situation of the tract granted, designating the country or district, and the water-courses, and should also either refer to the date and nature of the survey, if already executed, or direct with precision where and how it is to be surveyed, stating in either case the contents in acres or arpents.

This certificate, and not the entry made by the clerk in the proceedings of the board, must govern the surveyor-general. The 7th section prescribes that—

The commissioners shall be authorized, whenever they may think it necessary, to direct the surveyor-general, or officer acting as such, to cause any tract of land already duly surveyed to be resurveyed.

Forms of these certificates appear in the case of *West v. Corcoran* (17 Howard, 403,) and the Attorney-General of the United States, in speaking of confirmations under the said 4th section, remarks that—

The 7th section of the act under which they confirmed this title authorized them, if they judged it necessary, to order a resurvey; it is to be presumed that, if they had thought it necessary to the purposes of public justice, they would have ordered a resurvey, instead of doing which they confirm according to the original plat held by the complainant; and therefore the claim must stand upon that plat, and is good for the quantity therein given, although it may exceed the specified quantity by a few arpents.

Counsel relies upon the act of 1807 and the conclusive decision of the board, but does not contend that they ordered a resurvey. The original *proces verbal*, figurative plan, and patent constituting the basis of Clark's title, passed upon in No. 104, must be taken as evidence of the extent and limits of the tract.

It is proper, in this connection, to mention the Wilder survey and the circumstances under which it was executed. You directed, in general terms, a survey of the claim to be made. On the day after your instructions reached the surveyor general, Mrs. Gaines transmitted the following letter to him, under date of July 20, 1869:

Being desirous of having a survey of location of a property owned by me within the city of New Orleans, containing 1,920 toises square, commencing at a point thirty feet distant from the line of the former palisade, or line of fortification heretofore existing, and for the purpose of facilitating the work, and knowing personally that Mr. W. H. Wilder is perfectly conversant with the lines of survey, and, in fact, with the whole titles, not only relating to my claim, but others, I respectfully ask that he be appointed to make the survey.

The surveyor-general states in his report that his office was in great confusion, and that until he had taken a full and complete inventory of all that belonged to it, and provided suitable rooms to arrange the records, he declined doing any official business.

Mrs. Gaines made a second application on the 7th of September, as follows:

I respectfully ask that W. H. Wilder, civil and topographical engineer of the city, be assigned to set off, survey, and locate the following-described tract of land, to contain 1,920 toises square, (French measure,) beginning at a point thirty feet distant from the line of the palisades, or lines of fortification at the Fort St. Louis, and extending along the line of said Fort St. Louis toward the then Fort Bourgoin, and along said line to such point as shall make a base, so that on a line raised at right angles and another running parallel with the base mentioned, and a line dropped from the last, will close upon the base and form a square, the same to contain the above number of toises square; said tract having been purchased by Daniel Clark in his lifetime of Beverly Chew, John Joice, and Richard Clark; said tract to include what was then called the ropewalk, and which said tract of 1,920 toises square was confirmed to the said Daniel Clark by the board of commissioners in 1812, (American State Papers, vol. 2, p. 265,) confirmation No. 104, which confirmation was communicated to Congress January 9, 1812, by Albert Gallatin, the then Secretary of the Treasury of the United States, and by the act of Congress creating the board, (act 3d March, 1807, sec. 4,) the decision of said board was made full and complete.

The letter of the surveyor-general to Mr. Wilder describes the lines as set forth in Mrs. Gaines' letter. He directed, however, the survey be made in strict conformity with the law confirming the claim, the titles on which it was founded, and the instructions which might, from time to time, be given from his office. He stated in his letter to you that neither in his office nor the register's could be found any of the evidence presented to the board when the claim was confirmed; that the originals filed and recorded in the register's office *might* have been destroyed by a fire which in 1865 consumed a large number of the records in charge of the State register; but that he could not account for the absence from the files of numerous copies of plats, and other evidence in support of claims comprised within the New Orleans township, which were sent there in response to a request of the surveyor-general, in 1856.

It appears that in six letters, dated in the years 1856 and 1857, the register sent to the surveyor-general the evidence on file in the register's office for sixty-six different claims, and that the receipt of them was acknowledged by the surveyor general. The evidence in support of claims No. 104 and No. 14 was acknowledged to have been received. The evidence in these two cases and in twenty-nine others was missing when the archives of the office were received by the present surveyor general. He adds that the survey had, therefore, to be made without the aid of any official information found in the surveyor general's office. It thus appears that the instructions given by the surveyor general were not based upon any documentary proof in his possession as to the initial point or the courses of the lines to be run, and that the survey was approved without the evidence essential to a full understanding of the subject. The survey is, I presume, executed conformably to the instructions, if the initial point be conceded. The plat is accompanied by a *proces verbal*, in which Wilder sets forth that,

After carefully examining sundry old maps of surveys, showing the lines of the palisades and the Forts St. Louis and Bourgoin, as also the line of the then city of New Orleans, which extended at that time from what is now called Barrack street, and the then lower line of Custom-house street, as also a copy of the patent for the tract which I was ordered to survey, and which patent was granted originally to Elisha Winter for 1,920 toises square, and confirmed to Daniel Clark, and being satisfied, as far as I could be by the documents named, as to the point from whence I should commence the survey, on the morning of the 4th of October, 1869, I established the initial from a point A on the lower side of Dorsier street, &c.

It will be perceived that Wilder states that he had in his possession a copy of the patent for the tract he was ordered to survey, granted originally to Elisha Winter and confirmed to Clark. In Mrs. Gaines's letter she speaks of the tract as having been purchased by Daniel Clark in his lifetime, of Beverly Chew, John Joyce, and Richard Clark, said tract to include what was then called the ropewalk, and which tract was confirmed to said Daniel by said board. Richard Clark's deed describes the land in precisely the same terms as Carondelet's patent, and recites that he had purchased the moiety of it from John Turnbull, the executor and partner of John Joyce, deceased; and I presume that Winter had conveyed the other moiety to said Daniel, so that the latter had a title to the whole tract.

Mrs. Gaines has not, in the support of the survey of Wilder, laid before me the copy of the patent which he mentions in his *proces verbal*,

nor has she produced any evidence whatever to establish the initial point or the true courses of the lines of the survey. The copy of the claim No. 104, containing a copy of Trudeau's plat, Carondelet's patent, and Richard Clark's deed to said Daniel, was traced to the possession of Wilder, and had been abstracted from the surveyor general's office with the files relating to other claims which, in the opinion of the surveyor general, would unfavorably affect the survey in question.

It is obvious, from an examination of all the remaining papers, that the Wilder survey is for a totally different tract from that described in Trudeau's survey and Carondelet's patent. With but a slight exception it is without the ancient lines of the city, and embraces not only a large portion of the commons, which Clark when a delegate in Congress labored to obtain for the city, and which were granted by the act of 1807, but part of the land covered by the confirmed claims, the files of which had been abstracted. Wilder took the line 30 feet from the palisades, mentioned in the Carondelet patent, and running it in a parallel direction to them, not 210 but 1,920 toises for his base, constructed his square in an opposite direction to the area laid down by Trudeau.

It was insisted in the argument that the claim, No. 104, was for a totally distinct and independent tract of land from that conveyed by Governor Miro. The counsel stated that "it is impossible that the ropewalk tract, or any part of it, or any appendage to it, was the same tract confirmed to Daniel Clark," and he has filed here a certified copy of the petition, answer, &c., in the case of *Gabriel Winter and others v. The Mayor, Alderman, and Inhabitants of the city of New Orleans*, in a suit pending in the district court of the United States in and for the district of Louisiana. In his letter to me of the 8th ultimo, he says that the record proves that the heirs of Winter commenced suit for the recovery of the ropewalk grant of 1791, made by Governor Miro to Winter, for 100 by 600 feet; and in a letter of the 10th ultimo again calls my "particular attention to case No. 14," which, he adds, "spoils the whole theory about the Trudeau survey and the 1,920 square toises."

The plaintiffs allege that on the 22d day of December, 1791, Elisha Winter obtained a grant from the Spanish government of a parcel of land containing 100 feet in front and rear and 600 feet in length on each side, according to a plan then made by the surveyor general, annexed to said grant, and that in consequence of said grant Winter was put in possession of said land, which he used, occupied, and enjoyed as a ropewalk, and on which he erected expensive buildings. They further aver that the Baron de Carondelet, then governor of the province of Louisiana, finding a part of the said tract necessary for the erection of the fortifications of the city, deprived the petitioners of the enjoyment of a parcel thereof, containing 33,874 superficial feet, or thereabouts, which were occupied by the said fortifications and their dependencies until some time in the year 1806, when the said fortifications being abandoned, the petitioners resumed the possession of said lands, which had been so occupied by the fortifications aforesaid, and erected a house thereon, but that the mayor, aldermen, and inhabitants of the city, in the year 1807, forcibly deprived the said Elisha Winter of the possession of said lands, and have leased the same on a perpetual rent to certain persons named in the petition; and that the said mayor, aldermen, and inhabitants,

have laid out for, and now occupy as, parts of public streets the remaining quantity of 5,620 feet, the whole without any title in said mayor, aldermen, and inhabitants; and that they have constantly since dispossessed the said Winter to the day of his death, and since his death refused to deliver the same to the petitioners. The petition states that the plaintiffs are the only heirs of said Elisha Winter, who died in the year 1812; and that the said mayor, aldermen, and inhabitants, as well as the occupants named, are in possession of the land. They pray that they may be paid the annual value of the land from the time when first possession was taken, &c.

This petition does not assert a title to the whole tract, 100 by 600 feet, covered by the Miro patent, but only to that portion of it taken by Carondelet as a site for the erection of the fortifications and dependencies. It makes no claim to the remainder, which, with additional land, is covered by the patent of Carondelet and Richard Clark's deed to Daniel Clark. The ex-appropriated land is distinctly shown in Trudeau's plat, and in paper No. 5 it is delineated and described as being reclaimed by said Winter and sold by the corporation. I may here remark that papers 1, 2 and 3, forwarded by the surveyor general, are copies of the original papers filed in that suit, certified under the seal of the court.

It is said by the counsel that the "surveyor general has sent here, as evidence, things which he ought to have known are not evidence, or else he is unfit for his office." It is proper for me to say, in justice to that officer, that the papers accompanying his reports are quite as competent evidence as those filed here by the counsel.

I have carefully examined the decision of the board of land commissioners in regard to the claim No. 14, of Elisha Winter. It recites that the claimant obtained an order from the King, for the purpose of erecting a ropewalk, and in the same year obtained a grant from Governor Miro, pursuant to royal order; that in 1793 part of the land was retrenched, containing about 842 superficial toises, to be used as a curtain to the fortifications, and the claimant was ordered to demolish his building which he had erected thereon. The conclusion of the board is, that "the fortifications having since been razed, we are of the opinion that the land reverts to the claimant, and do accordingly confirm him in his title." The legal effect of this was a recognition of his right to the land which had been condemned by order of Carondelet, and applied to public uses, for which it was no longer needed; and, as I before remarked, it was this and only this land that was in controversy in the suit to which the counsel refers. In his letter of the 10th ultimo, he furnished a "copy of the compromise in the suit," and states that, although not certified by the clerk, he has no reason to doubt its correctness. In looking at the "statement" of the instrument of compromise—for it is not furnished according to its tenor—I find that it sets forth that a suit had been brought for a portion of the land, which is a portion of the grant made by Miro, in 1791, for a ropewalk, and confirmed by the land commissioners; that as surveyed by Lafon, in 1805, it contained 33,874 superficial feet *square*, and was taken for the construction of the fortifications. After their destruction, it was taken by the city authorities, and, with the exception of 5,620 feet *square* reserved for streets, was sold. On verifying the survey, and the ascertainment of the area claimed by the plaintiffs, and occupied by the defendants and public streets, it was found to contain 31,520 feet *square*, instead of 33,874, as

exhibited in the plat. This is evidently meant for "square feet" and not "feet square," for there were but 60,000 square feet in the whole of the Miro tract. These are not the only instances in this case of the negligent transposition of the word "square," making it, as in the French and Spanish idioms, follow, whereas in our idiom it should precede, the substantive which it qualifies, when a specified number of units of surface, and not the product of that number multiplied by itself, is to be expressed.

There is, in the language of the writer of that statement, a "legend of Lafon's figurative plan," which it is stated had been "translated, in the event Mrs. Gaines should deem it proper to have that copied." He adds, "there is also another plan made by Pillie in behalf of the city, slightly varying from Lafon's, which it may be useful to copy from M. de Armas's records, page 6, part second, of his archives."

The figurative plans have not been submitted for my inspection. Lafon states that in making his survey, 23d November, 1805, Winter told him that he had theretofore sold a portion of his grant to Mr. D. Clark, the boundary of which was defined by certain sheds then existing. It so happens that Document No. 5 is a copy from Lafon's survey. The remainder of the paper is what purports to be a translation of Carondelet's patent of 23d May, 1794. In describing the land, it states, "as is amply demonstrated by the figurative plan on the other side" That plan is not furnished, but is undoubtedly the same as that which I have shown was laid before the commissioners.

I have referred to the record and papers at perhaps an undue length, but counsel, regarding them as of controlling effect, commented upon them in his brief and letters, and repeatedly invited my special attention to them. He evidently confounds the tract conveyed by Carondelet with the original ropewalk tract, and the latter with the ex-appropriated portion of it, subsequently claimed by Winter's heirs. He states that "the ropewalk tract did not contain 1,920 square toises, but, allowing for the street, only 33,874 superficial feet." It contained 60,000 square feet. The ex-appropriated portion of it, including the streets, for which the suit was brought, was averred, in the petition of Winter's heirs, to be 33,874 square feet. He alleges that "Daniel Clark's confirmation was, doubtless, prior in time; so, were it possible that the two confirmations were for the same land, that fact would have undoubtedly been proved to establish an outstanding claim." The precise time when the board acted in No. 104 and No. 14 does not appear. Assuming their decision to be essential, the date when it was rendered in either case is immaterial; for under the fourth section of the act of 1807, relied upon by counsel, it was final only against the United States. The board had no jurisdiction to try and determine a question of disputed title between individuals. Instances of interfering imperfect claims, recommended in the same reports by boards of commissioners for the final action of Congress, are not unfrequent; and the confirmatory acts often reserve, in express terms, to the parties the right of resorting to the courts for the adjustment of the matters in controversy. When Congress completed and confirmed an imperfect claim, and then confirmed another claim for the same land, the Supreme Court has decided that the older confirmation defeated the younger one, and that a court of justice could not go behind the first confirmation and ascertain from facts and title papers which claimant had the better original equity. But that doctrine has no application here. Had the confirmation been

for the 60 by 100 feet, and had the right of Winter's heirs rested upon it, it would have inured to the benefit of Winter's assignee, so far as relates to the part not ex-appropriated; and, at all events, it could not avail against a complete title, emanating from the governor general prior to 1st October, 1800, and subsequently conveyed by Winter. These questions were not involved in the suit, as no part of the land sought to be recovered was embraced in Carondelet's patent and Richard Clark's deed. But most of it is unquestionably included in Wilder's survey. I have quoted the positive and unqualified assertion of counsel that no portion of the ropewalk was included in confirmed claim No. 104. If this be so, the survey is manifestly erroneous.

Counsel asked permission, in the course of his argument, to support Wilder's survey in a colloquial interview, where the advantage of demonstrations could be had. A full opportunity was afforded him for that purpose, and the maps were exhibited. Rejecting Carondelet's patent and Trudeau's survey, upon the hypothesis, which he strenuously advocated, that they were for an entirely different tract of land from that covered by the confirmed claim, he offered nothing whatever to justify the adoption of the initial point or the course of the lines.

In the postscript of the brief it is urged that the survey is according to the "decree of confirmation," and that the surveyor, in going into the field, would "be governed by the precise rules that governed Wilder. He will consider, first, the *quantity*, for that in this case is the controlling call; second, he will consider the *shape* of the survey—a square whose sides are each 1,920 toises *in length*; third, that the lower or southern boundary calls for the upper or northern boundary of the then city of New Orleans, as that boundary was known in 1791, for that is the *date* referred to in the confirmation." Now as to the shape. If a tract is described as five miles square, its form and extent are those of a four-sided rectilineal figure, all the angles of which are right angles, and each side five miles long. But if the tract is described as "a piece of land containing five miles square," the description does not necessarily import that the contents are included between four equal lines drawn perpendicularly to each other. Its shape may be that of a rectangle, parallelogram, trapezoid, or of any other figure which contains the requisite quantity. If the counsel employs the terms "upper and lower" as synonymous with "northern and southern," then the survey is on the wrong side of the city. I presume, however, that he uses the word "upper," in its ordinary sense in such a connection, to denote that part of the city which is nearest the source of the river on which it is situate. He adds, that the upper line of the city is a controlling call, and that it matters not where on that line the surveyor commenced, if that upper line and "the lower line of the survey were run as the common dividing line." The lower line does not correspond with the upper line of the city as it was originally laid out, nor as it existed in 1791, nor as the boundaries were defined by the act of the legislative council of the territory of Orleans, approved 17th February, 1805. (Acts, p. 44.) The boundaries were not subsequently changed until after the old board was dissolved. Again, the tract is described as situate in the city of New Orleans, and "bounded on the upper side by vacant lands;" that is, lands not individually appropriated nor the subject of a hostile and adversary grant. The tract surveyed is not in the city as it existed in 1791, when the original grant was made, nor is it bounded on the upper side by the then public domain.

Counsel states, in his letter of the 12th ultimo, that he believes "that the Wilder survey is less advantageous to Mrs. Gaines than it might be." Is it possible that a piece of land situate within the leading city of the province, the residence of the surveyor and of the governor general, would be the subject of a transfer by "sundry deeds of conveyance," without a specific description, or a reference to an authentic survey, giving it a definite location by certain boundaries? I think not. I have carefully read Mr. Wilder's letter to you of the 12th of July last, and a paper from him in regard to this survey, transmitted with Mr. Paschal's letter of the 14th ultimo. He does not send a copy of the "old maps of surveys," or of the "original patent." The latter must have been founded upon a survey measuring and segregating the premises from the royal domain before the Spanish cession of the province; and it was his duty to conform his survey to it, if he had not the certificate of confirmation. The paper confirms the views I have above stated. I cannot avoid the conclusion that the patent to which he refers is that of Carondelet, which I have particularly described, and which was found in Wilder's possession, although he did not make the fact known to the surveyor general when the survey was in progress.

Counsel advances the opinion that this claim is one of those communicated by Mr. Secretary Gallatin to Congress, with his letter of January 8, 1812, and that it was confirmed by the acts of April 29, 1816, and April 12, 1814, and by the second section of the act of June 2, 1858. The determination of this point is not material, in the view I take of the case; but, after a full examination, I cannot concur in that opinion. No such duty devolved upon the Secretary, and he states that he transmits "a copy of the report made by the commissioners for the eastern district of the Territory of Orleans on the claims to land within the said district, which they have *not* confirmed." (Duff Green's edition, *American State Papers*, vol. 2, p. 224.) In a note at the foot of the page, it is said the "reports now published embrace the claims confirmed, as well as those rejected;" but this does not prove, nor even imply, that the list of confirmed claims was laid before Congress. Whether, therefore, the decision of the board be construed as a recognition of Clark's complete title, or, as in the views of counsel, a final and conclusive confirmation of the claim, it was not communicated to Congress. The act of 1816 embraces only claims in the western district of the State of Louisiana. The act of 1814 confirmed claims to lands by virtue of any *incomplete French or Spanish grant, or warrant, or order of survey* granted in the territory of Orleans, prior to December 20, 1803, when such claims had been filed with the register, and were embraced in his report or that of the commissioners, and where it appeared by such report "that the concession, warrant, or order of survey under which the claim is made contains a special location, or had been actually located or surveyed within the late Territory of Orleans, before the 20th day of December, 1803, by a surveyor duly authorized by the government making such grant." It has not been contended that these facts appear in the report, in case No. 104. Again, the object of this provision will be readily perceived by reference to previous legislation. The act of March 26, 1804, (2 Statutes, 287,) declared, with a proviso saving the rights of actual settlers, that all grants for lands within the territory ceded by the treaty of April 30, 1803, the title whereof was, at the date of the treaty of St. Ildefonso, (October 1, 1800,) in the government of Spain, and every act or proceeding subsequent thereto, of whatever

nature, toward obtaining any grant, title, or claim to such lands should be void and of no effect. The first section of the act of 1805 related to grants or orders of survey prior to October 1, 1800, to parties resident of the Territory on that day. The fourth section of the act of 1807 gave the commissioners power to decide finally upon such claims, if the parties were resident of the Territory *December 20, 1803*. But when the order of survey was subsequent to said 1st of October the commissioners had no authority to confirm it, but they were to report such cases to the Secretary, with a view to the ultimate action of Congress. The act obviously has not the slightest reference to claims confirmed by the board under the fourth section of the act of 1807; nor has the second section of the act of June 2, 1858. The section itself was repealed by the act of June 21, 1860. (12 Stat., 1866.) Claim No. 104 is placed under the head of the second species of the first class of decisions. In writing to the commissioners for Louisiana, on November 14, 1806, the Secretary of the Treasury prescribed rules in relation to the forms of the transcripts of decisions in favor of claimants for land, and remarked, "the transcripts of decisions for each district should be arranged in three general heads: first, complete titles from French or Spanish grants, and this class to be subdivided and arranged under two distinct heads: first, titles derived from the French; and second, those derived from the Spanish government." I need not mention the other classes. After the passage of the act of 1807, he directed that the report on claims rejected by them, or on which they had no power to make a final decision, should be arranged into three general classes, each of which might be considered as a distinct transcript, and be subdivided in the manner prescribed by his first letter. If the same instruction was sent to the commissioners in the territory of Orleans, they did not comply with it; but I notice that nearly all the cases among which No. 104 is found appear to be those where the party held a complete title.

Counsel in his correspondence called my attention to confirmation No. 16, to McNeill, and states that the land therein mentioned consists of a portion of the land covered by the plat of Trudeau's survey. This supposed discrepancy is entirely immaterial, as the conflicting rights of the parties, both claiming under complete titles, could not be affected by the action of the board. McNeill probably derived title under Stephens; but of this fact I am not advised, as the papers in No. 16 were among those abstracted from the office of the surveyor general. It appears from the report of that officer that Clark, on the 6th of August, 1806, by a notarial act conveying the remaining undivided half of this 1,920 square toises, acknowledged that the quantity set forth in the preceding conveyance for the other half was inadvertently given, as William Stephens had previously bought a portion of the land.

I am also referred to the case of Elisha Winter, who claimed to hold from Governor Carondelet a concession, but not a complete title founded upon a survey. (American State Papers, Gales & Seaton's edition, vol. 2, p. 632; *Ib.*, vol. 3, No. 241, No. 261, No. 315.) The words in the concession were "Concedo al dicho Elisha Winter mil arpanes de tierra quadradas." Winter insisted that the true interpretation of them was, "I grant to the said Elisha Winter a million acres of land," and he made a claim therefor. The board rejected, and Congress did not recognize and confirm it, although Winter several times prayed for the favorable action of that body. That case has no analogy to this, and I am unable to perceive that it bears upon any question before me.

Carondelet's patent, by reference to the official survey attached to it, granted a definite parcel of land by ascertained and distinctly described boundaries. It conveyed the tract "as fully represented on the annexed plan." There can be no controversy about the initial point, or the course and termini of the lines, for they were actually run and a record of them made. The statement of quantity is, therefore, entirely immaterial, but I presume that it is accurate. The words "las referidas mil nuevecientas y veinte toesas de tierra cuadradas," in Carondelet's patent, mean "the above-mentioned 1,920 square toises of land." They should have been "toesas en cuadro," if intended to express a square bounded by lines, each 1,920 toises in length. Of this I have no doubt. In Paschal's Annotated Digest, p. 206, will be found a translation of the Mexican colonization law of 1823, which, among other things, adopts and defines measures. Computing the sitio, it would contain 25,000,000 square varas. This is expressed in Spanish as "varas cuadradas." In Rockwell's Spanish and Mexican laws will be found a translation of land measures adopted by Mexico. Where the words "square varas" occur, they are a translation of the original "varas cuadras." (See Galvan's "Ordenanzas de Tierras y Augas," p. 441.) The report of the Senate Committee on Private Land Claims of May 19, 1860, (Senate Reports, 1st session thirty-sixth Congress, vol. 2, No. 228,) held that the phrase "cinco leguas cuadras," must be construed to mean "five square leagues," and not "five leagues square;" and my predecessor, in his letter to you of December 31, 1869, remarks that the interpretation should be applied in like cases.

Giving to the memorandum or entry of the commissioners in No. 104 all the weight claimed for it, and supposing that a survey might be executed without the certificate of confirmation, I should have no hesitation in saying, even in the absence of the last papers from the surveyor general, that the survey does not cover one foot of the land mentioned in that entry. I have described the location and extent of the tract it embraces. I find from the diagrams accompanying the original report of the surveyor general that on the upper side it is bounded, among other lands, by those of Pierre Foucher, claiming under titles preceding the 10th of August, 1767; by those of John E. Bore, whose claim was confirmed by the same commissioners in No. 130, who state that 875 arpents of the land had "been successively transferred by the several proprietors thereof since the year 1729 down to the present claimant, and that it appeared from a patent or complete title exhibited that the remaining 75 arpents were granted by the Spanish government to the claimant on the 7th of April, 1791; by those of Joseph Ducros, (No. 190,) who in person, or by those under whom he claimed, inhabited and cultivated the tract for more than ten consecutive years prior to the 20th day of December, 1803, and the survey whereof was executed under the French government in the year 1767. I refer to these entries as illustrating the diagram, and as showing the fact that the lands on the upper side of Wilder's survey were not public lands.

My reasons for the opinion that the lands mentioned in No. 104 are those delineated in Trudeau's figurative plan, and conveyed by Carondelet's patent, may be briefly stated. In the patents executed respectively by Carondelet and Miro, and in the entry made in No. 14, the royal grant to Winter in 1791 is mentioned. All of these papers obviously relate to the same original royal order, and it seems that the first survey of Trudeau was made to give it a location. The tract is

bounded on the upper side by the then vacant lands between it and the fortifications. (See entry of the board in No. 175, page 293.) On the lower side was the city. It is also shown conclusively that the plat of the survey of that tract was before the board, and it was upon it and the conveyances submitted to them, among which was that of Richard Clark, that they rendered their decision.

In view of these material and controlling facts, we must seek a reasonable interpretation of the expression "containing 1,920 toises square;" and I construe them to mean, in this connection, "containing 1,920 superficial toises." It would hardly be used to describe the area of a tract containing 3,686,400 square toises; and it must be recollected that such an area was larger than the city of New Orleans at the time of the cession of the province to the United States. In the language of authority cited by counsel, "the entire description in the patent must be taken, and the identity of the land ascertained by a reasonable construction of the language used. If there be a repugnant call which, by the other calls in the patent, appears to have been made through mistake, that does not make void the patent. But if the land granted be so inaccurately described as to render its identity wholly uncertain, it is admitted that the grant is void." The doctrine applies also to decrees, judgments, or orders of a tribunal which contain a description of a tract of land.

After obtaining possession of the abstracted document, and fully investigating the case, the surveyor general was satisfied that the survey did not embrace any part of the confirmed claim No. 104, and that it ought not to be approved. I believe there is no instance upon record, after a surveyor general, before the final action of your Office, has discovered either mistake in his instructions or in the doings of his deputy, and satisfied you of the fact, that a survey has been carried into patent. In your letter of the 18th August you state that the survey of Wilder is incorrect and invalid. Your decision in the exercise of your jurisdiction in such cases is final, unless reversed on appeal; but, inasmuch as you originally submitted the whole question to the Department for its opinion and supervisory action, the case has been retained for its determination.

I concur fully with you and the surveyor general in the opinion you have each expressed upon the survey, and direct that it be set aside and held for naught. You will also cancel and destroy the draught of the patent transmitted with your letter of the 11th January last.

The papers accompanying your letter are herewith returned.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. JOS. S. WILSON, *Commissioner General Land-Office.*

No. 470.

INSTRUCTIONS.

Relative to the issue of certificates of location under the act of June 2, 1858, (11 Stat., p. 294,) for private land-claims in Louisiana.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,

Washington, D. C., August 26, 1872.

SIR:—By the first section of the act of Congress approved March 3,

1819, entitled "An act for adjusting claims to land and establishing land-offices in the districts east of the island of New Orleans," certain claims to land derived from the Spanish or British governments are recognized as valid and complete titles; and by the second section, other claims founded on written evidence of title, though incomplete, are confirmed; but no claim is confirmed by the second section to any person to whom the title to a tract of land is recognized by the first section. By the third section of said act a grant, as a donation, is made to a class of claimants and actual settlers who had no written evidence to sustain their claims, but who had actually inhabited or cultivated the lands claimed or settled on prior to the 15th day of April, 1813; but it is provided that such grant, as a donation, shall be limited to a quantity not exceeding 640 acres to one person, and "that no lands shall be thus granted which are claimed or recognized" by sections 1 and 2 of said act. By the first section of the act approved May 8, 1822, entitled "An act supplementary to the several acts for adjusting the claims to land and establishing land-offices in the districts east of the island of New Orleans," certain claims to land derived from the Spanish and British governments are recognized as valid and complete titles. By the second section other claims, derived from the same source and based upon written evidence of title, though incomplete, are confirmed, and by the third section, as in the act of March 3, 1819, a grant, as a donation, is made to certain claimants and actual settlers, who had no written evidence to sustain their claims, but who had actually inhabited or cultivated the lands claimed or settled on prior to April 15, 1813, but this grant is limited to a quantity not exceeding 640 acres to one person, and it is provided that no lands shall be thus granted which are claimed or recognized by sections 1 or 2 of said act, or by virtue of the confirmation under the act of March 3, 1819, aforesaid. By the act of June 2, 1858, entitled "An act to provide for the location of certain confirmed private land-claims in the State of Missouri, and for other purposes," it is, among other things, provided that "where any private land-claim has been confirmed by Congress, and the same, in whole or in part, has not been located or satisfied, either for want of a specific location, prior to such confirmation, or for any reason whatsoever other than a discovery of fraud in such claim subsequent to such confirmation, it shall be the duty of the surveyor-general of the district in which such claim was situated, upon satisfactory proof that such claim has been so confirmed, and that the same, in whole or in part, remains unsatisfied, to issue to the claimant, or his legal representatives, a certificate of location for a quantity of land equal to that so confirmed and unsatisfied."

Under the provisions of this last-named act I observe that numerous applications have been made to your office for certificates of location, not only by those persons who had claims confirmed to them in express terms, by acts of Congress, but also by those persons to whom Congress has made grants as donations. Were it an original question, I would not feel justified in recognizing these donation claims as *confirmed* private land-claims, for two reasons:

1. Congress made donations to claimants or actual settlers where it appeared from the lists or registers which it had before it for consideration, that "they had actually inhabited or cultivated the land claimed or settled on, on or before the 15th day of April, 1813;" and as such registers and lists do show that certain claims were so inhabited and cultivated, and fail to show it as to others, the natural construction of

the act would be to confine its benefits to cases where it is shown by such registers or lists that the land had been so actually inhabited or cultivated, and to exclude all others. Congress did not, it appears to me, infer inhabitation or cultivation from the fact of settlement, and, therefore, by the terms it used, it required the inhabitation or cultivation to be shown by the registers or lists themselves.

2. I am not satisfied that a simple donation or gift of a tract of land, which has not been surveyed or segregated from the public domain, to a party whose claim or right to the same is not recognized, is a *confirmed* private land-claim. The donation confers upon the party a private land-claim, and should Congress, subsequently, upon its being surveyed and set apart from the public domain, confirm such survey, it then undoubtedly becomes a *confirmed private* land-claim.

But the questions presented are not new. It appears, by the records and usages of this Office since 1819, that all who made settlement prior to April 15, 1813, have been regarded as entitled to donations; and it also appears that this class of claims have been uniformly regarded and treated as *confirmed private land-claims*. This construction has been adhered to so long that notwithstanding I entertain doubts as to its being legitimate and correct, I am compelled, though reluctantly, to acquiesce in and follow the same as the established rule of the Office; but while doing so I feel it incumbent upon me to enjoin upon you the exercise of the utmost care, vigilance, and circumspection in examining and passing upon applications for certificates of location, and to direct your attention to the requirements of the law authorizing their issue. The act only authorizes the issue of certificates of location "where a private land-claim has been confirmed by Congress," and requires you—

1st. To take satisfactory proof that such claim has been so confirmed.

2d. To take satisfactory proof that the same, in whole or in part, remains unsatisfied.

If the proof is not clear and conclusive on both of these points, you have no right to issue certificates of location in any case. To decide either or both of these questions, it will be necessary for you, as a preliminary step, to ascertain and determine the exact location of each claim as it was originally made.

This will clearly appear if we consider the fact that Congress, by the second section of the act of March 3, 1819, excluded from confirmation by that section the claims of any person to whom the title to any tract had been recognized by the first section, and by the third section excluded from grants, as donations, such lands as had been recognized or confirmed by the first or second section; and again, by the third section of the act of May 8, 1822, Congress expressly provided that no lands should be granted as donations which had been claimed or recognized by the first and second sections of that act, or by virtue of the confirmation under the act of March 3, 1819. It follows, as a matter of course, that where there is such conflict, and the prior and superior confirmation takes precedence, and the lands covered by the second or inferior claim are excluded from confirmation, that you cannot determine whether a given claim is confirmed or not until you have ascertained and determined its precise locality. Again, the definite location of such claim is necessary to prevent the Government from being defrauded by the duplication of claims by the original confirmees or assignees, for I observe that the same party is sometimes reported on two or more lists.

The location of the claim is also necessary to a determination of the area or quantity, for these confirmations or donations were for lands in place of the lands which had been claimed and inhabited or cultivated, and were not in the nature of floats, to be located wherever the party might designate, and for a quantity not originally embraced in the claim or settlement. The quantity covered by the original claim or settlement was not enlarged by the donation act, but in this respect the acts are clearly restrictive, and limit the party to 640 acres, or such less quantity as he had embraced in his original location.

The rough estimate of quantity made by the party in presenting his claims before survey is not conclusive, and the quantity to which a party is entitled can only be determined by a definite location of his claim and the adjustment of conflicts, and it has frequently occurred that the quantity originally claimed had been much reduced by a precise location of lines, in the absence of any contest, or by the adjustment of conflicting interests in cases where the inferior title had to yield to the superior. The law is, in my opinion, not only clear on these points, but my interpretation of it is sustained by the usage and practice of the Office from 1819 to the present time. It was not until the act of June 2, 1858, authorizing the issue of certificates of location, that a claim could be treated as a "float," and that act would not have become a law if parties had been previously allowed to locate their claims according to their choice; but as they had been confined to the lands *settled on* and *inhabited or cultivated*, and the original settlement and inhabitation or cultivation fixed and determined the locality of the claim, and they were not permitted to go elsewhere and take up an equal quantity, and as it sometimes happened that the Government, through inadvertence or mistake, disposed of the land embraced in the original claim, Congress undoubtedly thought it just and equitable to give the parties whose lands had been thus disposed of the right to locate an equal quantity of other lands, and it provided for the issue of certificates of location to enable them to do so, and thus a claim, which before that time had been fixed and confined to a certain place, became locatable wherever the party might elect, on lands subject to private sale. But there is nothing in the act of Congress which can be construed to authorize the issue of certificates of location to parties whose claims cannot be located because of conflict with claims held by a prior or superior title, for such claims have never been confirmed, for the good and sufficient reason that the claimants were not settlers on the public domain, but intruders and trespassers on private property.

In order to guard against and prevent the issue of certificates of location to parties who may not be clearly entitled thereto, you are hereby instructed to require all applicants for such certificates, in making proof of confirmation and non-satisfaction of a claim, to define and establish, by full and satisfactory evidence, the exact location of the claim according to its original boundaries, and, if the claim is not presented by the original confirmee, you will require the assignee or legal representative of such confirmee to prove and show a continuous and connected chain of title from such confirmee to such assignee or legal representative. Unless the proof is full, explicit, and satisfactory, on all the points involved in the investigation, you should decline to issue certificates of location. As the act of June 2, 1858, charges this Office with the duty of determining whether such certificates of location are properly issued, you will, in all cases where you issue certificates, for-

ward them to this Office for approval, accompanied by the evidence upon which you have based your decision, and also state fully, in a report over your own signature, your reasons for issuing such certificates.

Please acknowledge the receipt of this letter.

Respectfully,

WILLIS DRUMMOND, *Commissioner.*

E. W. FOSTER, Esq.,

United States Surveyor-General, New Orleans, La.

No. 471.

D. J. WEDGE.

1. No settlement claim in Louisiana was confirmed by act of May 8, 1822, which conflicted with superior recognized or confirmed claims, and in order to determine whether such a settlement claim is confirmed, it is first necessary to ascertain its location.
2. Before certificates of location under the act of June 2, 1858, are issued by the Surveyor General, that officer should, 1st. Take satisfactory proof that the claim has been confirmed. 2d. Take proof that the claim remains in whole or in part unsatisfied.
3. The Commissioner of the General Land-Office has authority in these cases to prescribe the kind of proof and the manner in which it shall be made.
4. Settlement claimants under the acts of March 3, 1819, and May 8, 1822, were not entitled in all cases to 640 acres each.
5. The burden of proof is upon the applicant for certificate of location under the act of June 2, 1858, to show that the claim in lieu of which certificates are asked, has been confirmed.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., July 14, 1873.

SIR:—The case of D. J. Wedge, claiming to be the legal representative of Thomas Chritendon, applicant for a certificate of location for 640 acres of land under the act of June 2, 1858, brought before this Office by appeal from your decision of January 6, 1873, refusing to issue such certificate, for the reason that the parties had failed to show the location of the original claim, has been carefully examined and considered.

By the eighth section of the act of Congress approved April 20, 1812, entitled "An act for ascertaining the titles and claims to land in that part of Louisiana which lies east of the river Mississippi and island of New Orleans," as extended by the supplemental act of April 18, 1814, and March 3, 1819, certain commissioners were authorized and required to report for the consideration of Congress a list of actual settlers on the public lands in said district, who had no claims derived either from the French, British, or Spanish governments.

Under these acts a list was reported, including the claim of Thomas Chritendon, based on settlement alleged to have been made in 1811. This list, made by Cosby and Skipwith, on the 4th of July, 1821, did not show the quantity of land claimed by Chritendon. This and other lists having been reported to Congress, it, by the third section of the act approved May 8, 1822, made a conditional grant or donation to such settlers in the following language:

"And be it further enacted, That every person, or his or her legal representative, whose claim is comprised in the lists or registers of claims reported by the registers and receivers, and the persons embraced

in the lists of actual settlers, or their legal representatives, not having any written evidence of claim reported as aforesaid, shall, *when it appears by the said reports or by the said lists* that the land claimed or settled on had been actually inhabited or cultivated by such person or persons in whose right he claims, on or before the fifteenth day of April, one thousand eight hundred and eighteen, be entitled to a grant for the land so claimed or settled on, as a donation: *Provided*, That not more than one tract shall be thus granted to any one person, and the same shall not contain more than six hundred and forty acres; and that no lands shall be thus granted which are claimed or recognized by the preceding sections of this act, or by virtue of a confirmation under an act entitled 'An act for adjusting the claims to land, and establishing land-offices in the districts east of the island of New Orleans,' approved on the third day of March, eighteen hundred and nineteen: *And provided also*, That no claim shall be confirmed where the quantity was not ascertained and report made by the registers and receivers, prior to the twenty-fifth day of July, one thousand eight hundred and twenty."

It is assumed by the attorneys for the applicant that this section granted and confirmed to Chritendon the land claimed by him, to the extent of 640 acres, but Congress appears to have entertained a different opinion, for it treated the list in which this claim was reported as not coming within the provisions of the grant and confirmation made by that section, for the reason that the quantity of land was not ascertained and reported prior to the 25th day of July, 1820, and by act approved August 6, 1846, it removed the restriction imposed by the second proviso of the third section of the act of May 8, 1822, and confirmed the claims embraced in certain lists which had been excluded by that proviso.

But this confirmation was subject to all the other restrictions and limitations contained in the said third section of the act of May 8, 1822, as will fully appear by reference to the act of August 6, 1846, which is in the following language:

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the second proviso of the third section of the act of eighth May, eighteen hundred and twenty-two, entitled 'An act supplementary to the several acts for adjusting the claim to land and establishing land-offices in the districts east of the island of New Orleans,' shall not apply to the reports dated eighteenth November, eighteen hundred and twenty, and twenty-fourth July, eighteen hundred and twenty-one, of Cosby and Skipwith, on settlement-claims in that part of Louisiana which lies east of the Mississippi River and west of Pearl River, but such claims which, according to the said reports, were inhabited or cultivated, or where the date of settlement was before the fifteenth April, eighteen hundred and thirteen, are hereby confirmed, under the other restrictions of said third section; but this confirmation shall in no manner affect prior rights, and shall only amount to a relinquishment on the part of the United States."

As the first proviso to the third section of the act of May 8, 1822, limited and restricted grants of donations to settlers on the public lands, and expressly excepted and excluded from the grant the claims of settlers which were in conflict with the superior claims recognized by the first and second sections of the act, and confirmed by the act approved March 3, 1819, it follows, as a matter of course, that no settlement

claim was confirmed which conflicted with such superior recognized or confirmed claims; and therefore, in order to decide whether any particular settlement claim was confirmed by the act of May 8, 1822, or August 6, 1846, it is first necessary to ascertain its location, and to determine whether the settlement was made upon the public lands of the United States, or upon the private land claims of individuals deriving title from the French, British, or Spanish governments. For if the claim was not upon the public lands it was not confirmed by Congress, and if it was not confirmed by Congress there is no law authorizing the issue of certificates of location; for the act of Congress approved June 8, 1858, only authorizes the issuance of such certificates of location in cases in which a private land claim has been confirmed by Congress, and remains unsatisfied, in whole or in part; and the same act requires you, before issuing such certificates, to take satisfactory proof that the claim has been so confirmed.

This will more fully appear by reference to the third section of said act, which provides "that in all cases of confirmation by this act, or where any private land claim has been confirmed by Congress, and the same, in whole or in part, has not been located or satisfied, either for want of a specific location prior to such confirmation, or for any reason whatsoever, other than a discovery of fraud in such claim subsequent to such confirmation, it shall be the duty of the surveyor general of the district in which such claim was situated, upon satisfactory proof that such claim has been so confirmed, and that the same, in whole or in part, remains unsatisfied, to issue to the claimant, or his legal representatives, a certificate of location for a quantity of land equal to that so confirmed and unsatisfied." I could not see how it was possible to decide that one of these donation claims covering a settlement, and, therefore, confined and limited to a particular tract of land, and in nowise partaking of the nature of a "float," to be located at the discretion of the claimant, had been confirmed, unless the location of the tract was first ascertained; and, therefore, on the 26th of August, 1872, I addressed you a letter of instructions directing you to take testimony as to the original location of these settlement claims.

The attorneys for the applicant in this case, in lengthy and able arguments, not only question the right of this Office to prescribe any rules for your guidance in the matter of taking proof in applications for certificates of location under the third section of the act of June 2, 1858, but also attempt to show that the particular instructions were not correct, claiming that the surveyor general acts judicially in weighing the proof, and that this Office has no jurisdiction to prescribe what shall be the kind or amount of proof in these cases.

In support of this position, they give extracts from the opinions of Attorneys General Wirt and Butler, based upon the acts of February 5, 1813, and May 29, 1830, to the effect that where proof must be made to the satisfaction of the register and receiver, this Office cannot revise or control their decision, or make any regulations concerning the weight or force of evidence that may be offered.

These opinions were written before the passage of the act of July 4, 1836, entitled "An act to re-organize the General Land-Office," which gave to the Commissioner of that Office a general supervisory power over all matters pertaining to the survey and sale of the public lands of the United States, as well as private land claims, and under which it has been repeatedly held by departmental decisions that he not only had

the power to issue regulations, but to review the acts and decisions of his subordinates performed and made pursuant to the provisions of statutes similar to the act of June 2, 1858, which does not in express terms provide for such regulations or for appeals.

But admitting that the opinions of the Attorneys General cited by counsel are correct under the statute of June 2, 1858, they are not applicable to the case under consideration; for in the instructions of August 26, 1872, to which counsel object, there is nothing whatever intended to control, or which could have the slightest tendency to control, the exercise of your judgment as to the weight, force, or sufficiency of the evidence submitted by any applicant in support of a claim for certificates of location. On the contrary, they relate solely to the kind of proof which should be offered for your consideration, leaving you to judge of its sufficiency. This, instead of being in conflict with the opinions of the Attorneys General, is in complete harmony therewith; for Attorney General Butler, in the very opinion from which the attorneys for applicant quote, says that the Commissioner of the General Land-Office "may prescribe rules conformably to which the proof is to be made," and "determine by regulations what kind of proof shall be received and in what manner it shall be made."

By reference to my instructions of August 26, 1872, you will perceive that this is all that is done. You are merely directed, 1st, to take satisfactory proof that the claim had been confirmed; 2d, to take satisfactory proof that the same in whole or in part remained unsatisfied; 3d, in order to determine whether a claim was in conflict with a superior claim, and thereby excluded from confirmation by the acts of March 3, 1819, and May 8, 1822, you were directed to take proof as to the location of the claim. There is not one word in the instructions "concerning the weight or force of the evidence that may be offered," or that had the remotest tendency to control your judgment as to its sufficiency or insufficiency.

The attorneys in this case say that the Commissioner cannot prescribe what shall be the kind or amount of proof; Attorney-General Butler, on the contrary, says that he may prescribe the kind of proof and the manner in which it shall be made. Accepting the opinion of the Attorney-General as authority, I confined my instructions to the kind of proof to be taken, leaving you to judge of its weight, and to issue or refuse to issue certificates according to your judgment as to its sufficiency or insufficiency, subject to revision and approval or disapproval by this Office.

But the attorneys for applicant say that it is impossible for them to furnish proofs of the location of their claim. This is their misfortune. But as Congress requires proof of confirmation, and the question of confirmation cannot be decided without first ascertaining its location, I see no way by which this Office can properly relieve them from the difficulty of their situation. It is the duty of this Office, and of yours, to protect the Government against improper and unfounded claims; and this can only be done by requiring parties to bring themselves clearly within the provisions of the statutes under which they assert their claims.

Statutes are cited to show that at the time these claims were made settlers were prohibited from marking their lines or boundaries in a particular manner. But, as my instructions did not require the boundaries of claims to be established by any particular marks, I am unable to

see what bearing these citations have upon the case under consideration. The claim of an actual settler on the public domain does not necessarily have to be defined by "blazed lines" or stakes in order to establish its identity, but it is usually asserted in such a manner as to be known and recognized by neighboring settlers.

It is claimed that it was the duty of the Government to make the survey of these donations, and, as its officers neglected to do so, the claimant should not suffer the consequences of their neglect. But no neglect is shown in this case, and the Government does not presume neglect on the part of its officials. The circumstances do not indicate neglect, but rather that the surveyor, who established the boundaries of other claims, did not find Chritendon in possession of any public lands that could be located. This presumption is strengthened by the fact that neither Chritendon nor any one claiming to be his heir or a purchaser from him has ever asserted a claim since the list was reported.

The claim for certificates of location is now asserted by a man who does not pretend that he ever knew anything of Chritendon or any heir of his, or the place of his pretended settlement, but who derives all the right he has through a purchase at a recent succession sale.

The attorneys argue at great length to show that the claim is not limited by the improvements, and that all actual settlers to whom donations were made by the acts of March 3, 1819, and May 8, 1822, are entitled to 640 acres of land. I fully agree with them in the opinion that the improvement of the whole claim was not necessary, and that the claim was not limited in area by the improvements; but, although they were entitled in some instances to a greater area than that actually improved, a claim had to be so located as to include the improvements, but they were not entitled in all cases to 640 acres of land, and in the adjustment of these donation claims numerous instances can be cited where, by reason of conflict with superior titles, the claim was limited to a less quantity, and in some instances the claim was wholly defeated by such conflict, and it has never been held that a claimant was absolutely entitled to 640 acres, although the Government, in a liberal spirit, allowed that amount to be surveyed and set off to each claimant where so much public land could be found in one body, including his improvements, and not in conflict with a superior right or title.

It is further argued that the non-location of the claim does not defeat the right or confirmation. This is true if the party had a settlement claim, and the location of the claim can now be ascertained, so as to determine whether it was on public or private land, and enable you to decide whether it was confirmed or unconfirmed.

The claimant is entitled to certificates of location, provided the claim was not in conflict with a superior title and has been confirmed by an act of Congress.

But if the location of the claim cannot be ascertained, it is impossible to decide whether or not it was confirmed, and if you cannot decide that it was confirmed, and that it remains unsatisfied, the issuance of certificates of location is not authorized.

Counsel contend, however, that the question of conflict is not material, that it is the claim and not the land which is confirmed, and that settlers had a right to 640 acres of land notwithstanding such conflict. This is not in harmony with the act making the donation, or the con-

temporaneous construction placed on it by the Government. Congress may, and frequently does, grant or confirm to a party a quantity of land, and authorize him to make the location upon any of the public lands of the United States, subject to entry; but it did not do so in this and other cases of the same class, but donated particular tracts of land, viz: the land settled upon and inhabited or cultivated prior to April 15, 1813.

The grant and confirmation were for lands "in place," and the party was confined in the location to the lands which he had inhabited or cultivated, and was not permitted to make a selection at his discretion.

Therefore the argument of counsel, on this point, is not applicable to the case we are now considering, however proper it might be in the case of a grant partaking of the nature of "a float."

Counsel further argue that the want of a specific location cannot defeat the claim of their client. This is true, provided the claim was confirmed, but if it was not confirmed he has no right to certificates of location under any circumstances.

And as the question of confirmation cannot be decided without first ascertaining the *locus* of the original claim or settlement, it is indispensably necessary for you to take proof on that point, not alone for the purpose of discovering whether the claim has been satisfied, but for determining whether its situation was such as to bring it within the acts confirming settlement claims on the public lands, but expressly excluding such as might be found on private grants made by the Government from which the United States derived title.

A claim may have been confirmed and not satisfied by specific location or otherwise. In such case Congress provides indemnity in the form of certificates of location. But it does not make provision for satisfying claims which were not confirmed, and therefore requires proof to be taken on that point. In this case the objection to the issuance of scrip is not merely that the claim has not been specifically located, but that it has not been confirmed.

The burden of proof is on the claimant to show confirmation, and in order to do so he must show where the settlement and claim were originally made; for Congress did not confirm all claims, but only certain settlement claims having a fixed place; or, in other words, it did not grant and confirm to these settlers the right to make a location anywhere they might select on the public domain, but merely gave to them the claims which they had already made and located, provided that they should be found on the public lands of the United States.

Numerous statutes are cited to show that Congress granted indemnity, or authorized new locations, in cases where settlers and claimants had been deprived of their claims by conflict, or a subsequent disposition of the lands by the Government.

These statutes have no bearing upon this case further than to sustain the position which this Office takes—that Congress alone can afford relief in such cases.

In the cases cited it provided such relief by special acts making new grants to the parties whose previous claims had been defeated because of conflicts with superior titles, regardless of the fact as to whether the first claims had been confirmed or not.

In other words, having the power to dispose of the public domain, and considering the peculiar circumstances and equities of the particular cases presented to it for consideration, it provided relief by author-

izing new locations; not because the original claims were confirmed private land claims, but because Congress, in its discretion, thought the parties entitled to relief.

In acting on the list, however, in which Chritendon's claim was reported, Congress, confined the relief to cases which it had confirmed, and this Office possesses neither the power nor the right to go beyond its provisions and authorize the issuance of certificates of location to parties whose claims had not been confirmed by Congress, nor even to parties whose claims had been confirmed by authorized commissioners or by the courts.

Congress expressly limited the jurisdiction of surveyors general in the matter of issuing certificates of location to cases which it had examined and confirmed, and required them to take satisfactory proof that they had been so confirmed. And therefore it follows that in all cases where the fact of confirmation is not fully and unquestionably established, you should refuse to issue certificates.

In this case the determination of the location of the claim became necessary to a decision as to whether it had or had not been confirmed, and as its location could not be shown or ascertained with sufficient certainty to enable you to decide whether it had or had not been confirmed, you did right in refusing to issue the certificates of location. I therefore affirm your decision, because the fact of confirmation has not been established, but waive any consideration, or decision, on the point as to whether D. J. Wedge is a legal representative of Thomas Chritendon by virtue of his purchase at the succession sale, for the reason that, as the claim of Chritendon has not been confirmed, the decision on that point is not material in this case.

You will give the parties in interest notice of this decision, allowing sixty days for appeal.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

E. W. FOSTER, Esq., *United States Surveyor-General, New Orleans, La.*

No appeal taken.

No. 472.

CIRCULAR.

GENERAL LAND OFFICE,

October 25th, 1860.

GENTLEMEN:—By an act of Congress approved June 22, 1860, entitled "An act for the final adjustment of private land claims in the States of Florida, Louisiana and Missouri, and for other purposes," you are appointed Commissioners to hear and decide, under instructions from this office, all matters respecting such claims to land within your district as come within the provisions of said act.

You will observe that this act confers power upon you to receive such claims only as are founded on *written* title, and hence you have no authority to receive, or act upon, any claim founded on ancient settlement merely, where the same is unaccompanied by such written title from the authorities of the former government.

You are authorized to receive and act upon such claims for tracts within your district as have emanated from any foreign government, bearing date prior to the cession to the United States of the territory

out of which said States were formed, or during the period when any such government claimed sovereignty, or had the actual possession of the district or territory in which the lands so claimed are situated.

This warrants you in receiving and acting upon claims, which originated under the former governments, where they exercised the granting power *de jure*, and before such governments had ceded the country, and those made by the Spanish authorities while in actual occupancy of territory held by them as the government *de facto*. Thus, for example: Spain parted with her legal authority over the province of Louisiana by the Secret Treaty of 1800, at San Ildefonso; Spain ceded Louisiana to France, and during the period that elapsed from that time to the cession to the United States in 1803, by Napoleon, the Spanish authorities exercised the granting power, and so, several years subsequent to 1803, Spain, while in occupancy of the portion of the ancient province of Louisiana between the Iberville, or Manchac, and the Perdido, exercised the granting power, and during this period her grants were those of the government *de facto*.

Your attention is particularly directed to the 1st, 2d, 3d, 7th, 8th, 9th, and 10th sections of this act

SECTION 1. Under this section you will receive all applications of persons, or their legal representatives, having the right to claim under the provisions of the act; also, the evidence of claim, abstract of title, plat of survey, and the sworn statement required by the act. Should there be any conflict, your decision should carefully show the nature and extent of interference, whether by grant, sale, or location; and a complete record should be made of all the papers, in the order above mentioned, including your decision, in a substantial book kept for the purpose.

The cases will bear on the record a regular series of numbers, in the order in which they may be recorded, and after record the papers will be properly filed and retained in your office until otherwise directed.

SECTION 2. By this section you are authorized "to hear and decide, under such instructions as may be prescribed by the Commissioner of the General Land-Office, in conformity with this act, and according to justice and equity and the principles" thereafter "established, in a summary manner, all matters respecting such claims within the districts aforesaid as come within the provisions of this act;" "to administer oaths, compel the attendance of and examine witnesses," &c. The expense of procuring witnesses must be borne by the claimants, as the act makes no provision for their payment; and in case it may be found necessary to *compel the attendance* of witnesses, you will avail yourselves of the services of the United States Marshal for that purpose. This section also provides for a final report to this office upon the claims presented, in which they shall be arranged in separate classes, as directed by the following section, viz:

SECTION 3. The classification will be in the following manner:

The classes will bear the following captions:

"Class No. 1. Twenty years' possession and cultivation claims, which, in the opinion of the commissioners, ought to be confirmed."

"Class No. 2. Claims where there is no actual possession and cultivation for the period mentioned, but which, in the opinion of the commissioners, ought to be confirmed."

"Class No. 3. Claims which, in the opinion of the commissioners, ought to be rejected."

Each class will be arranged, in tabular form, under the following heads:

The 1st column will contain the "Number of the claim," according to the Record referred to under section 1; the 2d, the "Name of claimant;" 3d, "Derivation of title;" 4th, "Possession and cultivation," showing beginning and end of same: 5th, "Date of filing," before you; 6th, "Description," which should be by legal divisions and subdivisions, where the lands have been surveyed by the United States, with column of Remarks, distinctly designating interferences by sale or otherwise, with particulars as to dates, names of conflicting claimants, etc.

SECTION 7. Requires that the facts reported as proven by any former Board of Commissioners acting under authority of Congress, "shall be taken as true *prima facie*, and the evidence offered before such former Board, and remaining of record, shall be admitted on the examination of the claims made under the provisions of this act."

In admitting such evidence you will be careful to state its substance, referring to the record where it may be found, if in the reports of former Boards; and if in the State Papers, to the vol. and page of same—Duff Green's edition, in 5 vols.

SECTION 8. The effect of this section is to withdraw from sale or location all lands claimed under the provisions of this act, immediately upon a claim being properly and legally filed for the same, with a plat showing, in connexion with the public surveys, its precise locality and limits. It will, therefore, be your duty to examine carefully all applications for claims, and note the same, in order that the lands covered thereby may be protected from interference; and in any case where the lands so claimed have been hitherto deemed to be public lands, you will report the fact immediately to this office, and furnish a copy of the plat, with the name of claimant and character of title. You will note on the face of such report, beginning with No 1, as follows: "Report No. — under 7th Sec., Act 22d June, 1860."

SECTION 10. Contemplates an annual report to Congress, by this office, of the progress of the work under this act.

To enable us to make such report, an annual statement will be required of you, after the present year, on or about the 15th September, during the period the act remains in operation, which is limited to five years. With such statement you should send up a transcript of the record, contemplated in the first section of the act, which should be accompanied by an index.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner*.

REGISTER AND RECEIVER.

No. 473.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 18, 1872.

GENTLEMEN:—I inclose herewith a copy of an Act of Congress, approved June 10, 1872, entitled "An Act to extend the provisions of an act entitled 'An Act for the final adjustment of private land claims

in the States of Florida, Louisiana, and Missouri, and for other purposes," (Part II., No. 79,) by virtue of which you are authorized, as Commissioners, to hear and decide, under instructions from this office, all matters respecting such claims to land within your district as come within the provisions of the Act of June 22, 1860, as extended and amended by this act.

The first section extends the provisions of the act of 22d June, 1860, for three years from and after the passage of this act.

The second section provides that "all persons claiming lands as specified in the first section" of the Act of June 22, 1860, "may have their claims confirmed *in accordance with the forms and in the manner prescribed in said act*, in all cases where it shall be satisfactorily proved that the claimants, and those from whom they derive title, have held continuous possession of the land claimed from the date of the cession to the United States of the territory out of which the States of Florida, Louisiana, and Missouri were formed."

As the only lands specified by the first section of the Act of 1860 are private land claims, lying within the States named, and claimed "by virtue of grant, concession, order of survey, permission to settle, or other written evidence of title," it is evident that Congress, by said section, did not intend to enlarge the classes of claims mentioned in the Act of 1860, but simply to vary the proof required so as to afford relief to claimants whose written evidence of title, properly acquired from the former government, had been lost or destroyed. You will, therefore, require, in all cases presented under this section, satisfactory proof—

1. That the land for which confirmation is sought, was acquired by virtue of grant, concession, order of survey, permission to settle, or other written evidence of title emanating from the French, Spanish, or British governments. This fact must be established in all cases by the production of the original title papers, unless it shall be proven that said title papers have been lost or destroyed, in which case parol evidence of their contents may be admitted.

2. That the claimants, or those from whom they derive title, have held continuous possession of the land claimed from the date of the cession to the United States of the territory out of which the States of Florida, Louisiana and Missouri were formed, which date, for the States of Louisiana and Missouri, is the 30th day of April, 1803, and for the State of Florida, the 22d day of February, 1819. (See *U. S. v. Lynd's heirs*, 11 Wallace, p. 632.)

The proof of possession in claims presented under this section should be full and explicit, showing not only the date when such possession was taken, but also the character of such possession and any other facts by which the good faith of the claimant may be shown.

Where not modified by the second section of this act and this letter, the Act of June 22, 1860, and our instructions (copy herewith) of Oct. 25, 1860, relative to claims under said Act, will guide your investigations of claims presented under this Act.

WILLIS DRUMMOND, *Commissioner*.

TO REGISTERS AND RECEIVERS.

Approved: C. DELANO, *Secretary of the Interior*.

No. 474.

RUDOLPHUS DUCROS.

Certificates of location can only be issued for such portion of a confirmed private land claim as is found to be in conflict with a prior confirmation. The location of a private land claim must be by a United States surveyor.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., April 12, 1873.

E. W. FOSTER, ESQ., *U. S. Surveyor General, New Orleans, La.*

SIR:—Your predecessor, Wm. J. McCulloh, Esq., with his letter of December 20, 1860, transmitted to this office, for approval and authentication, twenty-three certificates of location, dated December 18, 1860, and numbered 11 A. to 11 W., inclusive, each for eighty acres except the last, which is 104.26 acres, all in favor of Rudolphus Ducros or his legal representatives, and issued in satisfaction of so much of claim No. 484, in the report of the register and receiver at New Orleans, Louisiana, confirmed by the act of 11th May, 1820, as is stated to be in conflict with other claims.

The act of June 2, 1858, (11 Stats., p. 295,) authorizes the issue of scrip of this character in all cases "where any private land claim has been confirmed by Congress, and the same, in whole or in part, *has not been located or satisfied*, either for want of a specific location prior to such confirmation, or for any reason whatsoever other than a discovery of fraud in such claim subsequent to such confirmation." There is no other authority of law under which scrip for confirmed claims in Louisiana can issue, and hence to entitle Rudolphus Ducros or his legal representatives to the scrip under consideration, it must appear that claim No. 484 *has not been located or satisfied*. This location I understand to mean a location by a United States surveyor.

Now, it appears by an examination of the record in this case that Rudolphus Ducros' claim, No. 484, confirmed on the 11th of May, 1820, was surveyed by United States Deputy Surveyor Augustus S. Phelps in the winter of the years 1830 and 1831, and at that time there were but two surveyed confirmed claims in conflict therewith, namely, the claim of Silvano Veillon and the claim of Francis Versaille, confirmed as Nos. 250 and 318 respectively by the old board of land commissioners for Louisiana. (Am. State Papers, Pub. Lands, D. Green's Ed., vol. 2, pp. 273 and 278.) The remaining fifty-six claims now in conflict with the claims of Ducros were confirmed by act of Congress approved June 25, 1832, and therefore could not have been legally surveyed by the United States authorities until after the date when the record shows the proper officer located the claims of Rudolphus Ducros, Francis Versaille and Silvano Veillon.

It is true that the present claimants for Ducros' confirmation are willing to yield their superior title in favor of subsequent and conflicting confirmations and locations, providing they can receive compensation in scrip; but from a careful examination of the law governing this case I am unable to find any authority for disregarding the plain language of the act of June 2, 1858, which clearly does not authorize the issue of a scrip for any part of a confirmed claim which, at the date of its location, was not in conflict with a prior confirmation.

It is therefore decided by this office that the issue of scrip in this case, December 18, 1860, by the United States surveyor general for Louisi-

ana, was erroneous, and that scrip can properly issue to Rudolphus Ducros or his legal representatives only for so much of claim No. 484, in township 13 south, of ranges 13 and 14 east, as is interfered with by the claims of Francis Versaille and Silvano Veillon, confirmed by the old board of land commissioners for Louisiana.

You will notify the parties in interest of this decision, and allow sixty days from the service thereof for appeal to the Hon. Secretary of the Interior. If at the expiration of said sixty days appeal be taken, you will transmit the same to this office; but if no appeal be taken, you will cancel the record made in your office of the scrip issued December 18, 1860, as aforesaid, and, upon a proper application, prepare and forward scrip in this case for the valid interferences, as indicated in this decision.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

Affirmed by the Secretary, March 2, 1874.

No. 475.

DON JOSE VALLIERE.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., ———, 187—.

SIR: In reply to your inquiries of the ——— relative to the validity of an alleged grant of land in Missouri and Arkansas, said to have been made on the 10th day of June, 1793, to Don Jose Valliere, by the Baron de Carondelet, then Governor General of the Province of Louisiana, you are hereby informed that about fifty years after the date when said alleged grant is stated to have been made, it was brought to the attention of the United States District Court, at Little Rock, Arkansas, by petition, for confirmation under the Act of June 17, 1844 (5 Stats., page 676); and subsequently, as appears by a letter dated June 6, 1847, from the District Attorney for the United States at Little Rock, Arkansas, all proceedings in said Court relative to the confirmation of said alleged grant were dismissed for want of prosecution.

The records of the General Land-Office do not show that this alleged grant was ever confirmed by the United States, or ever presented for confirmation except as above set forth, and hence it is not considered by this Office as of any validity whatever.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

II. IN CALIFORNIA.

No. 476.

Proof in Surveys of Private Land Claims.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 13, 1872.

SIR:—My attention has been called to the insufficiency of the *ex parte* testimony offered as proof in the determination of the various and im-

portant questions continually arising in the adjudication of surveys of private land-claims in California; and, with a view of obtaining more reliable evidence in such cases, you are hereby directed in all future cases of objection to the survey of a private land-claim, duly published according to law, to notify the parties in interest that the testimony of no witness hereafter examined, and whose statements are tendered to prove or disprove any of the matters in controversy, will be received unless said testimony shall have been taken under oath, before you or the clerk of some court of record, after notice to adverse parties of the time and place of taking such testimony and an opportunity given for cross-examination. It is desired, when practicable, that evidence of this character should be taken before you; but, to avoid inconvenience to parties living at a distance from San Francisco, it is thought proper to permit them to go before some one of the officers above named. In all cases, however, in which such evidence is not taken by you, the officers before whom it may be taken must transmit it under seal direct to your office.

In submitting to this Office documents filed as evidence in cases of objection to a survey as aforesaid, you will exercise due care that no such document be considered by you as evidence, or transmitted to this Office as such, until all the parties in interest have had an opportunity to inspect the same.

* * * * *

Respectfully,

WILLIS DRUMMOND, *Commissioner.*

J. R. HARDENBERGH, *United States Surveyor-General, San Francisco, Cal.*

No. 477.

RANCHO SESPE.

Where the final decree designated the specific boundaries of a confirmed claim, those boundaries must be followed; but if the decree only confirmed a certain quantity of land within exterior boundaries, the quantity is to be located in a compact form, or if the character of the ground renders it impracticable to locate it in one tract, then each separate location must be in a compact form.

The amount of land awarded by the final decree is to be surveyed so as to give the claimant what was intended by the original grant, in such a form as to render it convenient and easy of access, and if possible equal in value to the portion excluded.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, July 25, 1871.

SIR:—I have considered the case of survey of Rancho Sespe, confirmed to Thomas M. Moore by decree of the U. S. District Court for the State of California. The land in controversy, known as the Rancho Sespe, is claimed under a Mexican grant made in the year 1833, by José Figueroa, Brigadier General in the national armies of Mexico, Commandant General, Inspector and Superior Political Chief of Alta-California, to Carlos Antonio Carillo.

Carillo's grant was duly confirmed by the Departmental Assembly, and juridical possession given him. On the 17th of February, 1852, the land having passed, by the treaty of Guadalupe Hidalgo, under the

jurisdiction of the United States, Carillo petitioned the Board of Commissioners created by the act of March 3d, 1851, (9 Stat., 631,) for a confirmation of his grant, and on the 18th day of April, 1853, it was confirmed to the extent of *six square leagues*. Shortly after his petition to the Board was filed Carillo died, and his administrator after the confirmation above referred to sold the tract to Thomas M. Moore, the present claimant, receiving in consideration therefor the sum of \$18,500 in coin.

An appeal from the decision of the Commissioner to the U. S. District Court resulted in a confirmation of the grant to the extent of *two square leagues*, an admission of Moore being filed that this was the amount included in the original Mexican grant. An appeal taken to the Supreme Court was dismissed on motion of the Attorney General of the United States.

A survey was made in January, 1868, under the direction of the Surveyor General of California, as required by law; it was duly approved by him June 17th, 1868, and the publication required by the act of 1864, (13 Stat., 332,) was regularly made. This survey included 25,360 $\frac{1}{4}$ acres of land, nearly *six square leagues*. The land is situated between two abrupt ranges of mountains along the valley and on each side of the Santa Clara river. The river bank on each side is composed to a considerable extent of sandy plain or "avenal," perfectly worthless for purposes of pasture or agriculture. The arable and pasture land forms on each side of the river a comparatively narrow strip between the mountains on one side and avenal on the other.

By the act of 1864 (1st Section) surveys of private claims in cases of the kind under consideration are made subject to the "examination and approval" of the Commissioner of the General Land-Office. The survey of the land in controversy was forwarded to the Commissioner, who, upon examination, rejected the same, and awarded to the claimant the "right of selection to the extent of the quantity confirmed within the exterior boundaries of the grant," with the restriction that such selections should be made, as nearly as possible, in a compact form, allowing him, however, to exclude the avenal or sandy plain lying along the bed of the Santa Clara river.

James F. Stuart, attorney for settlers, has appealed to the Secretary, and in substance alleges as errors the following points in the decision of the Commissioner:

1st. That the claimant was allowed to select his claim within the exterior boundaries of the original grant.

2d. That he was allowed to exclude the sandy plain or avenal land along the valley of the Santa Clara river.

1st. The seventh section of the act of 1864, (13 Stat., p. 334,) reads as follows: "That it shall be the duty of the Surveyor General of California, in making surveys of the private land claims finally confirmed, to follow the decree of confirmation as closely as practicable, whenever such decree designates the specific boundaries of the claim. But when such decree designates only the out-boundaries within which the quantity confirmed is to be taken, the location of such quantity shall be made as near as practicable in one tract and in a compact form. *And if the character of the land or intervening grants be such as to render the location impracticable in one tract, then each separate location shall be made as near as possible in a compact form.* And it shall be the duty of the Commissioner of the General Land-Office to re-

quire a substantial compliance with the direction of this section before approving any survey and plat forwarded to him."

The duty of the Surveyor General under this section is plain. Where the final decree has designated the specific boundaries of the confirmed claim, he is to follow those boundaries, and make his survey conform to them. If the decree only confirms a certain quantity of land within exterior boundaries, he is to locate the quantity confirmed as nearly as possible in a compact form within those boundaries. And if it is impracticable, having reference to the character of the land, to so locate the claim in one tract, then "each separate location shall be made as near as possible in compact form." It is further made the duty of the Commissioner to require a substantial compliance with the requirements of this section before approving the survey. Under the direction of the Commissioner, and his power of supervision, the Surveyor General is to exercise a sound discretion in so locating the claim as to deal justly with the (Mexican) grantee, and still protect the rights of the government.

Natural obstacles to the location of the claim in one tract, or circumstances which would make such location a departure from the intent of the grantor, are sufficient reasons for the location of the claim in separate tracts, each in compact form. The amount of land awarded by the final decree is to be surveyed to the claimant, so as to give him as nearly as possible what was intended by the original grant, in such a form as to render it convenient and easy of access, and if possible equal in value to the portion excluded, giving it, however, where possible, compactness in form. This it seems to me is a reasonable construction of the act, and one that does but simple justice to the *bona fide* claimant.

The practice of allowing claimants in cases similar to this to select in compact form within the exterior boundaries the amount of land awarded by final decree is well established, and almost universally allowed by the Land-Office. It has also been recognized by the Supreme Court of the United States. Mr. Justice Field, in *U. S. v. Armijo*, (5 Wallace, 449,) uses the following language: "Under our system the right of the grantee to direct a selection of the quantity granted is admitted, subject only to the restriction that the selection be made in one body and in compact form." And again: "The objection that the survey does not locate the land in a compact form cannot be sustained. Compactness of form must depend in many instances upon a variety of circumstances, such as the character of the country, its division into different parcels by mountains, rivers, and lakes, and sometimes by the relation of the tract to neighboring grants." This right of the claimant to select the confirmed grant within exterior boundaries, as has been shown, is well established by the practice of the Land-Office, and is sanctioned by the courts, and therefore not now to be denied.

2d. A comparison of the original petition, grant and *deseño*, shows an intention on the part of all parties concerned to exclude the sandy plain or *avenal*. The petition recites the fact that along the river is "a very large bed of sand (*avenal*) which produces no pasture whatever, and consequently is of no use." The grant was made in compliance with the petition, and it may be reasonably inferred in the absence of words expressing the contrary that it was intended to cover only such land as was prayed for, and not that which was expressly represented to be worthless. The *deseño* shows the pasture land separated from *avenal*, and it was evidently intended to distinguish one from the other.

It seems to have been the intention of Carillo to ask for, and the Mexican authorities to grant, the pasture land on each side of the river, within the boundaries named, to the extent of two square leagues, and to exclude the avenal along the banks of the river.

It is shown that Moore paid a valuable consideration for the land, after the right of his vendor to it had been affirmed by the Board of Commissioners to the extent of *six square leagues*; that he has made valuable improvements on both sides of the river, and that he cannot now select the two square leagues finally awarded to him so as to include such improvements, without taking on both sides of the river. To compel him to include in his selection the river and the avenal banks, would, in my opinion, be unjust, and would defeat the intention of the original grantor.

I advise an affirmance of the order made by the Commissioner.

Very respectfully,

W. H. SMITH, *Assistant Attorney General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Acting Secretary, July 31, 1871.

No. 478.

WM. MCGARRAHAN.

Held—That the law presumed that a patent had been duly issued, when such a patent was found duly recorded in the record of patents. *Dondige*, 12. *Wheat*., 69.

That such presumption might be overcome by proof. *Lea v. Polk County Copper Co.*, 21 How., 494.

That the Secretary of the Interior had power to make the record conform to the facts, although the transaction took place prior to his induction into office.

That a former Secretary having jurisdiction, and having acted upon the matter, his decision should not be reversed by his successor. 2 Op. Atty. Genl., 9, 464. 4 Do., 341. 5 Do., 29, 123. 9 Do., 101, 301, 387. 12 Do., 358. *Hoar*, April 26, 1869, and *Akerman*, March 7, 1871. *U. S. v. Bank of Metropolis*, 15 Pet., 401.

Decision by Acting Secretary Cowen, Aug. 4, 1871.

No. 479.

RANCHO CORTE DE MADERA DEL PRESIDIO.

The decree of the court confirming the title of this claim, being one of a U. S. court sitting in a State where the common law prevails, must be construed by the ordinary rules of the common law applicable to it.

2. Where a written instrument is capable of two constructions, one consistent with and the other contrary to law, that consistent with the law must be given it.
3. When lines are laid down on a plat and are referred to accordingly in a written instrument, they are to be regarded as giving a true description of the parcel, as much so as if expressly recited in the instrument itself.
4. Juridical possession of a Mexican grant in California, is a segregation of the grant from the public lands, and is equivalent to a judicial determination of the boundaries of the grant.
5. The rule of law that natural objects when identified govern courses and distances applies to Spanish grants in California.

6. A written instrument must be so construed as to give effect to all its parts, and the whole instrument may be considered to determine the meaning of a particular clause or phase; and if parts are inconsistent they must be reconciled so as to serve the general intent.
7. When language used is capable of two constructions, one consistent with and the other opposed to the general intent, the law presumes the former to be the true one.
8. The final decree of the United States District Court confirming a private land claim in California, is conclusive both as to title and extent.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., January 6, 1872.

SIR:—I return herewith the papers transmitted with your letter of 30th September last, in the matter of the survey of the California private land-claim known as "Corte de Madera del Presidio," heirs of John Read, confirmees.

It appears from the papers that on the 2d of October, 1834, the then governor of California granted to Read land of the extent of one square league, a little more or less, as shown by the map attached to the *expediente*.

On the 28th November, 1835, juridical possession of the land described in the grant was given to Read, according to the boundaries as shown in said map.

The board of land commissioners confirmed the claim as containing one square league of land, be the same more or less, reference being had to the record of juridical possession.

The United States district court affirmed the decision of the board "in all things."

If the decree of the court ended here there could no question arise as to the extent of the rancho claimed; the grant, juridical possession, action of the board, and decree of the court all concurring as to the boundaries indicated by the map of the *expediente*.

But the decree adds that the claim is "confirmed to the extent and quantity of one square league."

You consider this limitation of quantity as conclusive upon your office, and accordingly approve Mathewson's survey for that quantity.

After careful examination of the papers and consideration of the arguments of counsel, I am constrained to differ with you on this point. There is an ambiguity in the decree, rendering it possible to give it two different constructions. One of these constructions would confirm what had before been done, give effect to the juridical possession, and be consistent with law. The other would disregard the antecedent history of the case, give no effect to the juridical possession, and arbitrarily limit the extent of the grant. In such a case, I am clearly of the opinion that the construction should be adopted which gives full force and effect to the action of the Mexican authorities, as sanctioned by the board of land commissioners.

Mathewson's survey is, therefore, disapproved; and you will direct another to be made conforming to the juridical possession.

The Assistant Attorney General in his opinion (copy herewith) discusses at length the questions of law and fact involved in the case, and I fully concur in the conclusion at which he arrives.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, December 26, 1871.

SIR:—I have carefully examined the case of the contested survey of the Rancho Corte de Madera del Presidio, coming up from the General Land-Office on an appeal by the claimant from the decision of the Commissioner, approving such survey. In the year 1834, Juan Read petitioned the then Mexican governor of California, José Figueroa, for a grant of certain land known as "the Corte de Madera del Presidio," as far as the point of the Tibouran, bounding with the mission of San Rafael, and the port of San Francisco. On the 2d day of October of that year, Figueroa granted to Read land described as follows:

"The land of which donation is made is of the extent of *one square league, a little more or less, as shown by the map attached to the expediente*. The judge who may give possession will cause the same to be measured in accordance with the ordinance for the marking out of boundaries, *the surplus which may result to remain to the nation for its convenient uses.*"

On the 28th day of November, 1835, juridical possession of the land described in the grant was given to Read, according to the boundaries of the same "as shown by the map attached to the *expediente*," being identical with that which he had previously occupied and enjoyed. Read presented his claim to the board of commissioners provided for by the act of 1851, and it was by them confirmed as follows: first, by accurately describing the boundaries of his juridical possession, and then with the following additional description: "The same on which said Juan Read resided in his life-time is known by the name of Corte de Madera del Presidio, and is situated in *Monroe* county, containing *one square league of land, be the same more or less*, being the same land described in the testimonial of juridical possession, and on file in this case, as having been measured to said Juan Read, under a grant of the same to him, to which testimonial and the map therein referred to, and constituting a part of the *expediente*, a traced copy of which is filed in the case, reference to it to be had." An appeal to the district court of the United States having been taken by the U. S. district attorney, that court, January 14, 1856, affirmed the decree of the commissioners as follows:

"It is by the court hereby ordered, adjudged, and decreed, that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged and decreed that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of one square league, being the same land described in the grant, and of which the possession was proved to have been long enjoyed; provided that the said quantity of one square league, now confirmed to the claimants, be contained within the boundaries called for in said grant, and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimant such less quantity."

A survey of the land was made by Deputy Surveyor Mathewson in October, 1868. He first included all the land contained within the boundaries, as shown by the map accompanying the *expediente* and identical with the juridical possession of the claimant. Finding, however, that he had thus included more than one square league, he proceeded to segregate until he had nearly approximated that amount. This survey was approved by the Surveyor General, and afterwards, upon appeal, by the Commissioner of the General Land-Office, who

held, with the first-mentioned officer, that the final decree of the district court limited the amount of the grant to one square league within the boundaries laid down in the map attached to the *expediente*, and that all in excess of that amount should be excluded from the survey. From this decision the claimants have appealed. The case involves a construction of the decree of the district court, and the only question presented is whether the survey, as approved, conforms to such decree.

It is argued on the part of the claimants that the words in the decree referring to the decision of the board "be, and the same is hereby, in all things affirmed," are the governing words, in effect affirming in each and every particular the decision of such board, and that the subsequent words "that the said claim be, and the same is hereby, confirmed to the extent and quantity of one square league," are only the general words, usual in such decrees, giving the supposed or estimated quantity included in the survey now under consideration.

Judicial decrees and judgments are not generally susceptible of two constructions; the care and precision with which they are framed, and the learning and ability of the judge, combining to make them in all things clear and explicit. The one in question, however, seems to be susceptible of two constructions, owing to the peculiar use of certain expressions apparently repugnant, but, in my opinion, consistent, when construed in accordance with the general rules for their technical use in similar cases.

I am of opinion that the decree of the district court confirmed to the claimants all the land lying within the boundaries shown by the map attached to the *expediente*, and of which juridical possession was given by the Mexican authorities to Juan Read, and that the words "to the extent and quantity of one square league," are only used to state in general terms the estimated quantity of the land within those limits. The decree of the court in this case, being one of a United States court sitting in a State where the common law prevails, must be construed by the ordinary rules of the common law applicable to it. (*Higuera v. U. S.*, 5 Wallace, 854.)

Those rules are the general ones applicable to the construction of written instruments. Having premised this much as the criterion by which, in my opinion, the decree in question should be construed, I proceed to state briefly some of the reasons that have led me to the conclusions stated above. 1st. The construction I have given is consistent, and the other inconsistent, with law, and where a written document is capable of two constructions, one consistent with, and the other contrary to, law, that consistent with law must be given it. (Coke, Litt., 42. 2 Blk. Com., 380. Chitty Cm., 84. *Archibald v. Thomas*, 3 Cowen, 284. *Ackland v. Lenly*, 1 P. & Daw., 636. *Thrall v. Newell*, 19 Vt., 202. *Jackson v. Tiffany*, 1 Wendell, 388.) The chain of title by which the claim in controversy was recognized and finally confirmed by the district court is perfect in all its parts. Judge Hoffman, in an opinion accompanying the decree, says:

"The case seems to present one of the few instances where every requirement of the law has been fully complied with."

So far as shown by the record, there was at no time any real dispute as to the regularity of the title, and until after the decree of the district court, no question as to the extent of the grant. Read petitioned for the rancho Corte de Madera del Presidio, giving general boundaries.

After the usual investigation by the Spanish authorities, a grant of the tract petitioned for was made in the words heretofore quoted, the map accompanying the *expediente* being referred to for the ascertainment of boundaries.

The magistrate who gave juridical possession was governed by the lines of Read's prior occupation, and by the boundaries as laid down in the map. It is true that the usual "*sobrante*" clause, "the surplus which may result to remain to the nation for its convenient uses," was inserted in the grant; but the magistrate seems to have considered the reference to the map, and the fact of the possession and occupancy of Read, as controlling this clause, and accordingly delivered possession of the land within the designated boundaries. This construction of the grant was legally correct, according to my understanding of the common use of the term "*sobrante*" clause in Mexican grants at that day, and the law generally applicable to similar cases. When lines are laid down in a plat, and are referred to accordingly in a written instrument, they are to be regarded as giving a true description of the parcel, as much so as if expressly recited in the instrument itself. (Washb. Real Prop., 367, [638]; 17 Mass., 207, 211; 14 Mass., 149; 36 Vt., 247; 1 Me., 219; 48 Penn. St., 253; 7 Cranch, 48.)

This question, however, is not strictly material to the present controversy, as the extent and quantity of the grant were definitely determined by the delivery of possession by the magistrate. This delivery of juridical possession was the segregation of the land granted from the public domain; it was the ascertainment of that which was before uncertain. These Spanish and Mexican grants were usually issued upon the petitions of the applicants, and were generally for a particular tract, the amount being a matter to be afterward determined, and being limited only by certain general regulations.

The grant having been made, the magistrate of the vicinage was directed to give possession, according to certain established ordinances. This possession, so delivered, was what determined the extent of the grant, and it was a part of the proceedings necessary to complete title. It was the act of an authorized agent of the nation, under the direction of the governor, and controlled by certain established laws, performed for the particular purpose of completing a title which was necessarily, without some such act, incomplete and inchoate. It is, therefore, of equal force and effect with all other parts of the proceedings, and should be given its full intended operation. On this point the Supreme Court of the United States, in *Graham v. United States*, (4 Wallace, 261,) says:

"By this proceeding, called in the language of the country the delivery of juridical possession, the land granted was separated from the public domain, and what was previously a grant of quantity became the grant of a specific tract. The record of a proceeding of this nature must necessarily control the action of the officers of the United States in surveying land claimed under a confirmed Mexican grant."

And, again, in *United States v. Pico*, (5 Wallace, 539,) the court said:

"Were there any doubt of the intention of the governor to cede all the land contained within the boundaries designated by him, it would be removed by the juridical possession given to the grantees. This proceeding involved an ascertainment of the boundaries of the land granted by the appropriate officers of the government, specially designated for that purpose, and has all the force and efficacy of a judicial determination. It bound the former government, and it is equally binding on the officers of our Government."

It is thus seen that in the case under consideration the juridical possession determined the extent of the grant, and that the board of commissioners took a true view of the law in confirming it by specific boundaries, according to the *desiño*, and the lines of such possession. With reference to this decree of the board there can be no controversy. The description of the land is simply perfect. The boundaries of the juridical possession are accurately described, and then follows the further description:

"The same on which said Read resided in his life-time is known by the name of Corte de Madera del Presidio, and is situated in Monroe county, containing one square league, *be the same more or less*, being the same land described in the testimonial of juridical possession on file," &c.

This confirmed all the lands within the boundaries named, the clause "be the same more or less," being simply an estimate of the quantity within those boundaries, having no particular significance in a system of land laws like our own. (*Fossat v. U. S.*, 20 Howard, 426; 7 Lester, 645.) The rule of law that natural boundaries, when identified, govern courses and distances, is too well settled to now admit of serious question; but as authority for the application of this rule to Spanish grants similar to the one under consideration, I cite the following cases: *U. S. v. Pico*, 5 Wallace, 539. *U. S. v. D. Aqueire*, 1 Wallace, 315. *Graham v. U. S.*, 4 Wallace, 261. The substance of these decisions is to the effect that when specific boundaries are mentioned in a Mexican grant, and juridical possession has been given accordingly, such boundaries govern the extent of the grant.

The board found a grant having specific boundaries, clearly identified, and a corresponding juridical possession. They accordingly confirmed the entire amount of land within such boundaries. In this form the case was appealed to the United States district court, and, after argument, the decree under consideration was made.

There can hardly be any reasonable doubt as to what was the duty of the district court upon this appeal in the administration of the law. The claim was legally perfect, and the decree was without error of law or fact. The court took up the case, and after declaring the case to be one of the few that presented a perfect and complete chain of title, and that no objection was perceived by the court or urged by the appellants against its confirmation, thereupon proceeded to confirm "*in all things*" the decree of the board, and then further confirmed to the "*extent and quantity of one square league.*"

Now what is the legal effect of this decree under the rule of construction I have stated? Does it confirm one square league, or all the land contained within the boundaries? Of the two constructions, I have already shown that one makes the decree of the court contrary to, and the other makes it consistent with law.

The latter, which construes the decree so as to confirm to the claimants all the land within the boundaries, should, therefore, under the rule of construction I have quoted, be adopted. Second. A written instrument must be so construed as to give effect to all its parts, and the whole instrument may be considered to determine the meaning of a particular clause or phrase. (*Chitty Com.*, 88, 91. 2 *Blk. Com.*, 380. 2 *Kent Com.*, 556. 3 *Washb. Real Prop.*, 343, [628,] 368 [639]. *Stevens v. Cearling*, 3 Scott, 740. *S. C. Stevens v. Cearling*, 3 Bing. N. C., 355. *Allen v. Holton*, 20 Pick., 463, [464.]

A careful consideration of the decree of the district court as a whole,

shows, I think, that the clause in question was not intended to limit, and does not limit, the general words of confirmation.

As before stated, the opinion of the judge accompanying the decree asserts the claim to be perfect, and that no objection was made or perceived to its confirmation. Confirmation is, therefore, made. First. Affirming decree below "*in all things.*" Second. "That the claim of the appellees is a good and valid claim." Third. "That the said claim be, and the same is hereby confirmed to the extent and quantity of one square league." Fourth. "Being the same land described in the grant, and of which the possession was proved to have been long enjoyed." Fifth. "Provided the quantity of one square league of land be contained within the boundaries called for in said grant." Sixth. "If there be less than that quantity within said boundaries, then we confirm to the claimant that less quantity" •

In that part of the decree preceding the proviso, there are three distinct confirmations of the claim, according to the boundaries, and one which, strictly construed, would limit the grant to one square league. The decree of the commissioners, "in all things affirmed," is certainly clear; so, too, is the language denominating the claim "good and valid;" so, also, the description, "Being the same land described in the grant, and of which the possession was proved to have been long enjoyed." Either one of these expressions standing alone, having reference to the decree of the commissioners, could be reasonably construed as a full confirmation of such decree. On the other hand, we have the language—

"That the said claim be, and the same is hereby, confirmed to the extent and quantity of one square league."

I think the latter clause was only intended as a repetition of the estimated quantity of the land as previously given by the petition, *desiño*, grant, and confirmation of the board. This view of the case is strengthened by reading in connection with the clause in question the one immediately following:

"Being the same land described in the grant, and of which the possession was proved to have been long enjoyed."

The same land described in the grant, and of which possession was long enjoyed, was not one square league, but the land included within the boundaries.

The proviso was, in my opinion, intended only to limit the amount of land finally confirmed to the exterior boundaries as given. A construction of the decree with a view to giving effect to all its parts would, therefore, involve a confirmation of the tract within the exterior boundaries.

To adopt any other conclusion would be to allow a single clause to override the general intent of the whole instrument, and this cannot be permitted.

When language used is capable of two constructions, one consistent with, and the other opposed to, the general intent, the law presumes the former to be the true one. (Chitty Com., 95. Washb. Real Prop., 343. [628.] *Ford v. Beech*, 11 Q. B., 852, 838.) Or if parts are really inconsistent, they must be reconciled so as to serve the general intent. (*Well v. Wright*, 2 Mod., 285.)

Having thus given some of the reasons why, in my opinion, the decree of the district court should be so construed as to include all the land within the given boundaries, it is necessary that I should briefly notice

the cases cited to sustain the opposite construction by the counsel opposed to an extension of the survey, and also to one referred to in the decision of the Commissioner.

In the argument against the extension of the survey, the case of the *United States v. Fossat* (20 Howard, 413,) is referred to as establishing the rule that a grant containing the usual "*sobranste*" clause should be construed to extend only to the stated amount within the exterior boundaries. In this case the confirmation of the district court was by specific boundaries, and the boundaries were ascertained. The decree was reversed by the Supreme Court, who confirmed the grant to the extent of one square league, following the "*sobranste*" clause. But it appears that *no juridical possession of the land granted was ever given*, and further, that specific boundaries were given for *only three sides*, there being no northern boundary whatever. The court said: "There is no call in the grant for a northern boundary, nor is there any reference to the *desiño* for any natural object or other descriptive call to ascertain it. *The grant itself furnishes no other criterion for determining that boundary than the limitation of the quantity as it is expressed in the third condition, ('sobranste' clause.)*" It is thus seen that in this case the "*sobranste*" clause is only resorted to *in the absence of any recognized or ascertainable natural boundary, and in case where juridical possession was never given*. It does not, therefore, apply to the case under consideration, where there is no doubt as to boundaries, reference being had to the decree of the board, and clear proof of a careful juridical possession. Counsel also cite the decision of the Department in the Novato Ranch case. (Lester, 646.) The Secretary, in his decision in this case, evidently followed the Supreme Court decision in the case of *Fossat* just discussed. The survey boundaries having been followed, contained three square leagues, while the decree, after giving boundaries, contained the clause, "two square leagues, a little more or less." The Secretary rejected the larger survey, and ordered the same reduced to two leagues. When, however, the case reached the Supreme Court, that tribunal approved the two-league survey, but plainly intimated that had an appeal been taken by the claimants, they would have been given *all the lands contained within the out-boundaries*. (2 Wallace, 448.) The only reason why the question of the extent of the grant was not taken up appears to have been because the Novato Ranch claimants took no appeal, and it had been previously held that the decree of the court below, in the absence of appeal, was final.

This case cannot therefore be properly used as a precedent to apply to the one under consideration. On the question of the force and effect of the "*sobranste*" clause, the Commissioner, in his decision, refers to the case of *Yontz v. United States*. (23 Howard, 497.) In this case also there was no delivery of juridical possession, and as the case rested entirely on an equity, the grant was construed by reference to the incipient steps, the petition and recitations, all of which indicated an intention on the part of the claimant to acquire only the amount finally confirmed within exterior boundaries. This case is also dissimilar, in material points, to the one under consideration.

I have been unable to find a single case in which this "*sobranste*" clause has been given effect by the courts to limit the extent of the grant, where the same was made by specific boundaries, and juridical possession was given of the land. In the *Fossat* case, (2 Wall., 716,) Judge Grier, in delivering the opinion of the court, said:

"It is true, in the second condition of the grant, it is said, the judge who shall give possession of the land shall have it measured in conformity to law, leaving the *sobrante*, the surplus to the nation. But this is a *formal* condition, to be found, for *abundant caution*, in every Mexican grant."

The books are filled with authorities to show that natural boundaries govern courses and distances, and I have already, in this opinion, quoted several decisions of the Supreme Court, showing that juridical possession under a Mexican grant was conclusive as to its extent, and bound both Mexican and American governments. (*U. S. v. Graham*, 4 Wall., 261. *U. S. v. Pico*, 5 Wall., 537. *Malarin v. U. S.*, 1 Wall., 290.)

The decree of the district court was final, both as to title and extent, (*U. S. v. Halleck*, 1 Wall., 439; *U. S. v. Billings*, 2 Wall., 445,) and if it had in *clear terms* or even in the terms usually employed for that purpose, limited the amount confirmed, it would, in my opinion, be the duty of the Secretary to follow such decree, whether it conformed to his view of the law or not; but in a case like the present, where an ambiguity exists, I am decidedly of the opinion that such ambiguous language should not alone and unsupported be so construed as to interrupt the operation of legal principles so well established and so universally recognized by the courts as the ones I have referred to. I prefer rather to say the district court intelligently understood the law and properly administered it. After the survey by Mathewson, the district court took jurisdiction of certain exceptions to the same filed by the claimants, and on the 28th day of September *confirmed the one-league survey*. October 16, 1865, the court set aside its decree, for the reason that it was "*entered under a misapprehension*."

The Commissioner considered this as a judicial construction of the first decree limiting the confirmation to one square league, and explains its reversal by showing that the court had no jurisdiction to entertain the exceptions, and that this was the "misapprehension" referred to. It is true that the district court had at that time no jurisdiction of cases of this kind, but I am not certain that this was the "misapprehension" referred to in the decree of reversal.

It might have been a misapprehension of fact. However this may be, I am not disposed to advise that an explanation of the ambiguity in the decree of confirmation be allowed by reference to another decree equally involved in doubt, to the exclusion of the rules of law I have stated.

I therefore recommend that the decision of the Commissioner be reversed, and that the surveyor general be directed to make another survey, including the land within the boundaries particularly described in the decree of the district court, by reference to the confirmation by the board of commissioners, being the land covered by the juridical possession of the original claimant, Read.

Very respectfully,

W. H. SMITH, *Asst. Atty. General*.

HON. C. DELANO, *Secretary of Interior*.

SEÑOR GENERAL OF THE TERRITORY OF UPPER CALIFORNIA :

Juan Read, of the Irish nation, before your excellency with due respect presents himself and says: "That not having been able to obtain the place called 'El Sansalito,' he prays you to be so good as to grant him the place of 'El Corte de Madera del Presidio,' to the Punta del Tuburon," as shown by

the sketch or plan which your excellency has in your possession. Wherefore I pray your excellency to be so good as to grant my petition, by which I shall receive favor and grace.

JUAN READ.

PUEBLO DE SAN RAFAEL, September 4, 1834.

Translation of title and of juridical possession. Stamp first—seal—six dollars. For the years one thousand eight hundred thirty-two, and one thousand eight hundred and thirty-three.

CIVIL GOV'T OF UPPER CALIF'A.

José Figueroa, general of brigade of the Mexican republic, commanding general inspector and superior political chief of Upper California.

Whereas Don Juan Read, naturalized in the United States of Mexico, has for his own personal benefit, and that of his family, asked for the land known by the name of "Corte de Madera del Presidio," as far as "la Punta del Tiburon," bounded by the mission of San Rafael and the port of San Francisco, the proper measures and examinations being previously made, as required by laws and regulations, using the powers which are conferred on me, in the name of the Mexican nation, I have by decree of this day granted to the aforesaid Don Juan Read the above-mentioned land, declaring to him the ownership of it by these presents; said grant being understood to be in entire conformity with the laws, subject to the approval or disapproval of the most excellent territorial deputation, and of the supreme government, and under the following conditions:

1. That he will submit to these (conditions) which may be established by the regulation which is to be formed for the distribution of vacant lands, and that in the meantime neither the grantee nor his heirs can divide or alienate that which is granted to them, subject it to any tax, entail, pledge, mortgage, or other incumbrance, even for pious purposes, nor convey it in mortmain.

2. He may enclose it without prejudice to the crossings, roads, and servitudes; he will enjoy it freely and exclusively, applying it to the use and cultivation which may best suit him, but within one year, at farthest, he will build a house, and it will be inhabited.

3. When the ownership is confirmed to him he will request the proper magistrate to give him juridical possession in virtue of this patent, by whom the boundaries will be marked out, in the limits of which he will place some fruit or forest trees of a useful character.

4. The land of which donation is made is one square league, a little more or less, as shown by the map which goes with the *expediente*. The magistrate who may give the possession will cause it to be measured in conformity with the ordinance, in order to mark out the boundaries, leaving the surplus which may result to the nation for its convenient uses.

5. If he contravene these conditions he will lose his right to the land, and it will be denouncable by another person.

In consequence, I order that this present securing him for a title, and being held as firm and valid, note be made of it in the corresponding book, and it be delivered to the person interested for his security and other purposes.

Given at Monterey on the second of October, eighteen hundred and thirty-four.

[Signed] JOSÉ FIGUEROA.

[Signed] AUGUSTIN V. ZAMERANO, *Secretary*.

Being in the field and lands pertaining to the rancho of "Corte de Madera," of Don Juan Read, Saturday, the twenty-eighth of November, eighteen hundred and thirty-five, I, the constitutional alcalde of the port of San Francisco, *de assis*, acting in virtue of my office, with two assisting witnesses, for want of a notary public—present, citizens José Antonio Galuido and the Indian Neri, appointed measurers by the party interested, and Colindantes—I ordered them to proceed to the measuring of one square league of land, which, a little more or less, pertains to the rancho of "Corte de Madera," according to the title and map presented, in obedience to which, having again measured and examined the rope, they commenced said measurements from the solar, which faces west, and standing at the slope and foot of the hills which lie in that direction, and on the edge of the forest of red-woods, called "Corte de

Madera del Presidio," they commenced said measurements, and going from S. to N., they measured to an arroyo called "Holon," where, in another forest of red-wood, called "Corte de Madera de San Pablo," ninety cordels of fifty varas, and the person interested forcing there a known point as a mark, said that he would place a bound; from this point, taking a direction from north to south, the measurement was continued to Point Taburon; and they measured two hundred cordels, and said point serving as a mark and limit, he promised to place there the corresponding bound; thence continuing the measurement from east to west to the mouth of the Cañada, and the point of the "Sausal," which is near the Estero, lying east of the house of the person interested, which is at present on the rancho, there were measured ninety-four cordels; and from this last point continuing the measurement from east to west along the last line, to the place of beginning; they finished by measuring sixteen cordels, so that the square league of land which the rancho of "Corte de Madera" contains forms a square of twenty thousand Castilian varas, which, being regulated by said measures, they declared citizen Juan Read to be informed of the lands which belonged to his rancho, according to the title and map at the head of this *expediente*, so that no third party is injured.

Wherefore said citizen Don Juan Read pulled up various huls and stones and threw them to the four winds, in sign of his legal and legitimate possession. And at this period the constitutional alcalde ordered said Read, for the permanence and clearness of the boundaries which have been mentioned, to make, at his own cost and expense, bounds of masonry more than a vara high, that it may in all time appear, they be observed and kept as limits and boundaries of his lands by the others, neighbors thereto. And he prayed for a testimony that said measurements were made quietly and peaceably, without contradiction by any person, and I, the constitutional alcalde of the port of San Francisco, acting in virtue of my office, with two assisting witnesses for want of a notary public, give it that everything was done as has been said, and that the aforesaid measurements were executed to the best of the knowledge and understanding of the measurers, as they deposed, without deceit or fraud against any person; and for greater security and the ratification of the oath which they have made, they did not sign, not knowing how, and the others who knew how, and were present, did so before me and those of my assistants.

(Signed) FRANCISCO DE HARO.
 " MANUEL SANCHEZ.
 " JOSE DE LA C. SANCHEZ.
 " FERDINAND FELIZ.
 " TOMAS JEREMIAS JONES.

Assisting witnesses:

(Sd.) EUSEBIO GALENDO.
 " FRANCISCO SANCHEZ.

Filed in office December 23, 1852.

GEO. FISHER, *Secretary*.

To the honorable Commissioners to settle private land-claims in California:

The petitioners, Hilaria Sanchez de Read, widow, and Juan Read, Hilaria Read, Ynez Read, and Ricardo Read, children of Juan Read, deceased, respectfully show:

That on the 2d of October, 1834, José Figueroa, Governor of California, by virtue of authority in him vested, granted to the aforesaid Juan Read the tract of land called "Corte de Madera del Presidio," situate in the present county of Marin, containing one square league of land, more or less, as described in the original grant and map, which grant was duly proved.

That on the 28th day of November, A. D. 1835, the said tract of land was duly measured, and the juridical possession of it given to the grantee in due form of law.

In proof of which they submit hereby the original grant, map and record of juridical survey and possession, marked "A," with a translation, marked "B," and they further represent that the original grantee and the petitioners, his widow and heirs, have been for more than seventeen years, and the

petitioners now are, in the quiet, peaceful, and undisputed possession of said tract of land.

That the said Juan Read died on the 29th day of June, A. D., 1849, leaving the petitioners, his widow and only children.

That they know of no conflicting claim.

That they rely for confirmation of title upon the original papers submitted herewith, upon the records and notes in the archives of the former government, now in charge of the surveyor-general, and upon such other and further proofs as they may be advised are necessary.

Wherefore they pray the commissioners to confirm to them the aforesaid tract of land.

By their attorneys,

HALLECK, PEACHY & BILLINGS.

Filed in office December 23, 1852.

GEO. FISHER, *Secretary*.

Amended Petition.

Honorable board of U. S. land commissioners to ascertain and settle private lands in California.

By leave of the court, granted on this 13th June, 1854, by an order made on the motion of A. C. Peachy, claimants' counsel, for the reasons set forth in said motion and order, the following amended petition is filed in this case:

The petitioners, Hilaria Sanchez de Read, widow of Juan Read, deceased, and mother of Richard Read, deceased, who was an infant, heir of the said Juan, and John Read, Hilaria Read, and Ynez Read, children of the said Juan, respectfully shows:

That on the 2d day of October, 1834, José Figueroa, governor of California, by virtue of authority in him vested, granted to the aforesaid Juan Read the tract of land called Corte de Madera del Presidio, situated in the present county of Marin, containing one square league of land, a little more or less, as described in the original grant and map, which grant was duly approved.

That on the 28th day of November, A. D. 1835, the said tract of land was duly measured, and the juridical possession of it given to the grantee in due form of law, for proof of which they submit herewith the original grant, map, and record of juridical survey and possession, marked "A," with a translation, marked "B."

And they further represent that the original grantee, and the petitioners, his widow and heirs, have been for more than seventeen years, and the petitioners now are, in the quiet, peaceful, and undisturbed possession of the said tract of land.

That the said Juan Read died on the 29th day of June, A. D. 1849, leaving the petitioners, his widow and children, and a child named Richard Read, who is hereinafter mentioned, his only heirs.

That on or about the 1st of October, 1853, the said Richard Read, aged about thirteen years, died, leaving the petitioners his only heirs.

That the petitioners knew of no conflicting claim. That they rely for confirmation of title upon the original papers submitted herewith, upon the records and notes in the archives of the former government, now in charge of the surveyor general, and upon such other and further proofs as they may be advised are necessary. Wherefore they pray the commissioners to confirm to them the aforesaid tract of land.

HALLECK, PEACHY & BILLINGS,

June 13, 1854.

Filed in office June 13, 1854.

Attorneys for Claimants.

GEO. FISHER, *Secretary*.

HEIRS OF JUAN READ }
v.
THE UNITED STATES. }

For the place called Corte de Madera del Presidio, in Marin County, containing one square league of land.

The traced copy of the *expediente* which is filed in this case shows that Juan Read petitioned the governor in 1834 for a grant of the place called Sausalito; that, not being able to obtain the land solicited, he filed another

petition, dated September 4, 1834, for the land claimed in this case, and after proceedings to obtain information on the subject, the governor issued to him a grant, which is given in evidence, and bears date October 2, 1834. In August following the territorial deputation approved the grant, and judicial possession was given under it, as appears by the documentary proof thereof filed in the case on the 28th day of November, 1835. It appears from the testimony in the case that said Juan Read had a house on the place as early as 1833, in which he lived with his family; that he continued to reside there until his death, and after his decease his family remained in possession, and the representatives of his heirs still occupy the place. There is also proof of cultivation and improvements on the premises.

By the testimony of Francisco Sanchez and J. J. Papy, the death of said Juan Read and the right of the present claimants, as his widow and children, and his only heirs, are proved. They are entitled to a decree of confirmation.

Confirmed.

Filed in office June 13, 1854.

GEO. FISHER, *Secretary..*

HEIRS OF JUAN READ }
v.
THE UNITED STATES. }

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the said claim of the petitioners is valid, and it is therefore hereby decreed that the same be confirmed.

The land of which confirmation is hereby made is the same on which said Juan Read resided in his life-time; is known by the name of Corte de Madera del Presidio; is situated in Marin county, and bounded as follows, to wit: Commencing from the solar which faces west at a point at the slope and foot of the hills which lie in that direction, and on the edge of the forest of red-woods, called Corte de Madera del Presidio, and running from thence in a northwardly direction four thousand five hundred varas to an arroyo called Holom, where is another forest of red-woods called Corte de Madera de San Pablo; thence by the waters of said arroyo and the bay of San Francisco, ten thousand varas to the Point Taburon, said point serving as a mark and limit; thence running along the borders of said bay and continuing in a westerly direction along the shore of the bay formed by Point Caballos and Point Taburon, four thousand seven hundred varas to the mouth of the Cañada and the point of the "Sausal" which is near the estero lying east of the house on said premises, which was occupied by said Juan Read in November, 1835, and thence continuing the measurement from east to west along the last line eight hundred varas to the place of beginning; containing one square league of land, be the same more or less; being the same land described in the testimonial of juridical possession on file in this case, as having been measured to said Juan Read under a grant of the same to him; to which testimonial and the map therein referred to, and constituting a part of the *expediente*, a traced copy of which is filed in the case, reference is to be had.

ALPHEUS FELCH,
R. AUG. THOMPSON,
Commissioners.

Filed in office June 13, 1854.

GEO. FISHER, *Secretary.*

In the United States district court for the northern district of California.
Stated term, January 14, 1856.

THE UNITED STATES, APPELLANTS, }
v. } "Corte de Madera del Presidio." Tran-
HEIRS OF JOHN READ, APPELLEES. } script from board of coms., No. 497.

On appeal from the final decision of the board of commissioners to ascertain and settle private land-claims in the State of California.

Decree.

This cause came on to be heard at a stated term of the court, on appeal from the final decision of the board of commissioners to ascertain and settle the private land-claims in the State of California, under the act of Congress, approved on the 3d day of March, A. D. 1851, upon the transcript of the proceedings and decision of the board of commissioners, and the papers and evidence on which the said decision was founded; and it appearing to the court that the said transcript has been duly filed, according to law, and counsel for the respective parties having been heard, it is, by the court, hereby ordered, adjudged, and decreed that the said decision be, and the same is hereby, in all things affirmed; and it is likewise further ordered, adjudged, and decreed, that the claim of the appellees is a good and valid claim, and that the said claim be, and the same is hereby, confirmed to the extent and quantity of one square league, being the same land described in the grant and of which the possession was proved to have been long enjoyed: Provided, that the said quantity of one square league, now confirmed to the claimants, be contained within the boundaries called for in the said grant, and the map to which the grant refers; and if there be less than that quantity within the said boundaries, then we confirm to the claimants that less quantity.

OGDEN HOFFMAN, Jr., *U. S. District Judge.*

Endorsed: Filed January 14, 1856.

W. H. CHEVERS, *Deputy Clerk.*

At a stated term of the district court of the United States of America for the district of California, held at the court-room, in the city of San Francisco, on Thursday, the second day of April, in the year of our Lord one thousand eight hundred and fifty-seven.

Present: The Honorable Ogden Hoffman, district judge.

THE UNITED STATES }
v. } D. C., 183, L. C. 497.
HEIRS JUAN READ. }

The Attorney General of the United States having given notice that appeal will not be prosecuted in this case, and a stipulation to that effect having been entered into by the U. S. Attorney:

On motion by the district attorney it is—

Ordered, adjudged and decreed that the claimants have leave to proceed under the decree of this court heretofore rendered in their favor as under final decree.

OGDEN HOFFMAN,
U. S. District Judge.

Endorsed: Filed April 2, 1857.

JOHN A. MONROE, *Clerk.*

By W. H. CHEVERS, *Deputy.*

I, George E. Whitney, clerk of the circuit court of the United States for the district of California, and *ex officio* clerk of the district court of the United States in and for said district, hereby certify that the foregoing is a full and true copy of the decree and order vacating appeal in the above-entitled action, filed in my office.

Attest my hand and the seal of said district court this 25th of Nov., A. D. 1867.

[SEAL.]

GEO. E. WHITNEY, *Clerk.*

By A. D. SMITH, *Deputy Clerk.*

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., May 6, 1871.

J. R. HARDENBERGH, *U. S. Surveyor General, San Francisco, California:*

SIR:—This office has carefully examined the case of the survey of rancho "Corte de Madera del Presidio," heirs of John Read confirmees.

It is deemed unnecessary to recite *in extenso* the initial proceedings under

the Mexican government, and the subsequent action of the board of land commissioners and of the judiciary upon *title* and *survey*, as this has been done at sufficient length in the letter from this office of 11th March, 1868, to the surveyor general, and his report of 26th February, 1870.

It is proper, however, to state briefly:

1st. That Read's application, dated 4th of September, 1834, to the Mexican government was for the place called Corte de Madera del Presidio, as shown by the sketch or plan he presented. (Record of Evidence, vol. 13, p. 218.)

2d. The Governor passed the petition to the alcalde for report, among other things, as to the extent of the tract petitioned for. (Record of Evidence, vol. 13, p. 223.)

3d. David Spence, Juan Malarin, and Guillermo E. Hartnell were examined on oath by the Mexican authorities in reference to the points of inquiry by the governor, and all designated the tract as about a league long and about half a league wide.

4th. The grant, dated 2d October, 1834, mentions the land granted as "*one square league*, a little more or less, as shown on the map which goes with the *expediente*," and directs "*that the magistrate who may give the possession will cause it to be measured in conformity with the order to mark out the boundaries, leaving the surplus which may result to the nation for its convenient uses.*" (Record of Evidence, vol. 13, p. 223.)

The claimants in this case, who apply for extension of survey beyond the quantity of one square league, contend that the mention of that quantity in the original proceedings under the Mexican government, and subsequent proceedings by the board and courts, is merely a conjectural estimate, and not controlling, but that, on the other hand, the *boundaries* mentioned are controlling.

On this point the U. S. Supreme Court, in the case of *Yontz v. United States*, (23 Howard, p. 497,) held that "if it be true that the boundaries are conclusively defined in the grant, then no surplus could be thrown off by the survey. But if two" (one league in this case) "leagues are to be surveyed within larger limits, then the clause '*reserving the surplus which may remain to the nation for its convenient uses,*' is consistent.

5th. The alcalde, Francisco de Haro, who gave juridical possession, is particular to state that "the square league of land which the rancho of Corte de Madera contains, forms a square of twenty thousand Castillian varas, * * regulated by said measure"—meaning the measurement made when juridical possession was given—and the record shows that the unusually specific certificate of the alcalde was specially asked for by the claimant Read. (Record of Evidence, vol. 13, p. 229.)

6th. The U. S. district court, on 14th January, 1856, decreed that the decision of the board of land commissioners be "in all things affirmed," and further decreed that the said claim be "confirmed to the extent and quantity of one square league."

The counsel for the ranch claimants contend that the terms in the decree of confirmation by court, "the said decision" (of the board) "be, and the same is hereby, in all things affirmed," are conclusive, as compelling a survey to include all the land within the limits of juridical measurement, and that the terms "*to the extent and quantity of one square league*" in said judicial decree are not to be regarded as a limitation to that quantity, in the absence of the further terms of limitation "*and no more,*" sometimes found in the decrees of court.

This office fails to see how a decree for "*one square league*" would be more specific if the terms used were "*one square league and no more,*" as a square league represents a determinate number of acres.

7th. A survey was made in October, 1858, by R. C. Mathewson, and approved September 19, 1859, by Surveyor General J. W. Mandeville, which embraces 4,460.24 acres, or 21.56 acres in excess of one square league.

8th. This survey was brought before the U. S. district court upon exceptions thereto by the claimants, and said court, supposing it had jurisdiction, overruled the exceptions and confirmed the survey September 28, 1865.

This certainly shows what was the judicial interpretation of the decree of court confirming title in respect both to *extent* and *location*.

It is true that the same court afterward, October 16, 1865, set aside the

aforesaid order approving survey, for the reason that said order was "entered under misapprehension."

The surveyor general in his report of 26th February, 1870, gives as the reason for the last-mentioned action of the court "the want of jurisdiction."

The resident counsel for claimants, Messrs. Britton & Gray, allege that the reason stated by the surveyor general is erroneous, and that the approval of survey was not set aside "for want of jurisdiction in the court," but in view of the fact that the U. S. Supreme Court in the case of *United States v. Sepulveda*, (1 Wallace, p. 104,) ruled that surveys of this class did not come within the jurisdiction of the U. S. district court, and in the absence of any reason being given by the court itself other than "misapprehension," I am inclined to believe the reason assigned by the surveyor general was the correct one.

When the survey was before the court, upon exceptions thereto, the arguments now produced here were doubtless urged there, so that there would scarcely have been misapprehension of the facts in the case.

The survey is before us under the act of 1st July, 1864, requiring approval by the Commissioner of the General Land-Office to become final; and after a very careful examination of the matter, this office is of opinion, and so decides, that the confirmatory judicial decree limits the area to *one square league*, and that the survey executed by R. C. Mathewson, deputy surveyor, in October, 1858, and approved by the surveyor general September 19, 1859, should be approved as the final and correct survey of the rancho in question, the surveyor general's decision of 26th February, 1870, in these respects being affirmed. You will notify all parties interested of this decision, and allow thirty days from service of notice for appeal to the Secretary of the Interior, after which you will report the result; and if appeal be taken within that period you will promptly, on its expiration, forward to this office all papers that may be filed with you for transmission to the Department.

In the mean time you will please acknowledge the receipt of this.

Very respectfully, your obedient servant,
WILLIS DRUMMOND, *Commissioner*.

No. 480.

RANCHO SAN BARNABE.

Survey made prior and approved subsequent to the act of June 14, 1860, (12 Stat., 35,) and published in accordance with that act. No exceptions filed in the District Court.

Held—That the survey was final. Cites 12 Op. of Atty. Gen'l., 251, and decision of Secretary of the Interior, June 26, 1867, in case of Rancho Corral de Piedra.

Decision by Acting Secretary Cowen, Feby. 10, 1872.

No. 481.

PUEBLO LANDS.

Patents for Pueblo lands should issue to such corporations or other bodies of persons as are entitled to them, the survey of which has been approved by the proper officers.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 15th Feb., 1872.

SIR:—I have received your letter of the 10th instant, in which you state that your immediate predecessor held that the act of March 3d, 1851, (9 Stat., 631,) did not authorize the issuing of patents to municipal corporations or other bodies or parties entitled to Pueblo lands in California, the survey of which had been finally approved by the proper officials. You intimate a doubt as to the correctness of that construction of the act, and desire an expression of opinion from the Department.

I have carefully considered the subject and am of opinion that patents should issue to such corporations or other bodies of persons as are entitled to Pueblo lands, the survey of which has been finally approved by the proper officers.

The 13th section provides, that for *all claims* finally confirmed a patent shall issue to the claimant, upon his presenting an authentic certificate of such confirmation and a survey duly certified and approved by the Surveyor General.

The 14th section makes some exceptions to this rule, but does not provide that a patent shall not issue to the proper parties entitled to the Pueblo lands. It does provide that the provisions of the act shall not apply to any town lot, farm lot, or pasture lot, held under a grant from any corporation or town to which lands may have been granted for the establishment of a town by the Spanish or Mexican government, or the lawful authorities thereof, nor to any city or town, or village lot, which city, town or village existed on the 7th day of July, 1846, and requires in all such cases that the claim for such lands shall be presented by the corporate authorities of the town, or where the land on which the city, town, or village is situated was originally granted to an individual, that the claim shall be presented by the individual.

This section was intended to point out who, in the cases therein mentioned, should present the claims to the Board. When presented as pointed out in said section, the claims were to be treated like any other claims, and if confirmed and duly surveyed, were to be patented. I think there can be no doubt that this was the intention of the law-makers. You will hereafter follow this construction.

Very respectfully,

B. R. COWEN, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 482.

RANCHO TAJAUTA.

Ranch surveyed in 1858. Survey approved by the Surveyor General Sept. 17, 1860, by endorsement on the plat. Published four weeks in Los Angeles and San Bernardino. No order to return survey into court.

Held—That the date of approval should be taken as the date of survey. That although Los Angeles was the nearest town to the land, the law required one notice to be published in that place and the other in the nearest town, and did not require both notices to be published in Los Angeles.

The Surveyor General may approve a survey by publishing a notice that he has approved, as well as by endorsing his approval on the plat.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., February 21, 1872.

SIR:—I have had under consideration the appeal from the decision of the Commissioner of the General Land-Office, in the matter of the survey of the rancho "Tajauta."

This rancho was surveyed in 1858 by Henry Hancock, Deputy U. S. Surveyor, and found to contain 3,559 $\frac{1}{2}$ acres. This survey was approved by the Surveyor General (the indorsement of his approval being made on the plat on the 17th of September, 1860,) and was published four successive weeks in two newspapers, one published in Los Angeles and the other in San Bernardino. It was retained in the Surveyor

General's office for inspection during the time of publication and long afterwards, and no order was served upon him for its return into the United States District Court.

The Commissioner held that this rendered the survey final.

Several questions are made by the learned counsel who have appeared for the claimant.

They insist, 1st, that he is not limited to one league; and 2d, that the Hancock survey is not final—1st, because it was made before the passage of the act of 1860, and 2d, because it was advertised before the approval by the Surveyor General, when it should have been after such approval.

The Board confirmed the grant to the claimant as the land "known by the name of Tajauta, and on which said deceased" (claimant's testator,) "lived many years, and where he died," and situate in Los Angeles county, and gave its boundaries, "containing one square league, more or less, reference for the same to be had to the grant thereof and the maps which are given in evidence and filed in this case."

The District Court affirmed the decision of the Board "in part," and decreed that the claim of the above-named appellee is good and valid, and that confirmation be made to him of the lands formerly and for a long time occupied by Anastacio Abila, the father and testator of the appellee, to the extent of and within the boundaries described in the maps contained in the *expediente* filed in this case."

The rude *diseño* to which reference is thus made is nearly square in form, and yet attached to it and made part of it is the statement that it is 7,200 varas from north to south, and 2,750 varas from east to west, which, reduced to our measure, would give an area of 3,515 $\frac{1}{4}$ acres, being $\frac{17}{16}$ of a square league, and being forty-two acres less than the amount contained in the Hancock survey.

It seems that this Hancock survey did not include the residence of Abila, and if I were at liberty to do so, I should be glad to extend it westwardly, so as to include his residence, as was suggested in the letter of the Commissioner, of March 10, 1868; but I am without the legal power to do it, if the survey has become final. Has it become final? The lines of the survey were run in 1858, by the deputy surveyor, but there was no approval by the Surveyor General until in August or September, 1860, and after the passage of the act of June 14, 1860. It has been determined in the case of Corral de Piedra, June 26, 1867, and the opinion of Attorney General Stanbery, of September 30, 1867, that a survey made after the passage of the act of 1860, and duly advertised and not taken into the district court, is final, and I held in the case of San Bernabe, on the 10th instant, that a survey approved after the passage of the act of 1860, was such a survey as that act contemplated. The date of the approval should be taken as the date of the survey.

The act of 1860 requires the publication of the survey to be made "in two newspapers, one published in Los Angeles, and one of which the place of publication is nearest the land." In this case Los Angeles was nearest the land, and had two papers published in it. The Surveyor General published his notice in one of these papers, and in one paper published in San Bernardino. It is conceded that, excluding Los Angeles, San Bernardino is the place "nearest the land." There is some ambiguity in the language of the statute. The evident intent was to give as great publicity to the survey as practicable; and as Los An-

geles was the nearest important town in that section, it was required that one notice should be published there, and the other in a town "nearest the land," meaning, as I think, some other town than Los Angeles. This is the practical construction that has been given to the statute by the Land Department since its passage, and it is now too late to disturb it.

The other objection to the publication is that it was made before the approval of the survey by the Surveyor General. This approval is indorsed on the plat as September 17, 1860. The first publication of the notice in the San Bernardino paper was made August 13, 1860, the first in the Los Angeles paper August 25, 1860.

The act of 1860 does not prescribe any particular manner in which the Surveyor General shall express his approval of a survey, and no method has been prescribed by the land-office. The fact of approval is required, but the method of making it is left to the discretion of the officer. He has his option to do it in the way that he shall deem best. He may do it as well by signing a notice that he has approved, and publishing that notice in a public newspaper, as by indorsing his approval on the plat of the survey.

He may do one, or both. In this case he has done both. I see no objection to treating the date of his first notice of approval as the date at which he did first approve of the survey. His subsequent indorsement of approval upon the plat does not show that he had not approved prior to that date. Taken with the notices it shows a continuous approval.

I overrule the objections of the appellees, and affirm the decision of your predecessor.

The papers transmitted with your letter of 28th January, 1871, are herewith returned.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 483.

RANCHO GUADALUPE.

A newspaper dated and first distributed in the town of Santa Barbara, in Santa Barbara county, California, was published in Santa Barbara, although said paper was printed in San Francisco, California.

Where a survey had become final by publication under the act of June 14, 1860, and a patent in accordance with such survey had been duly signed, sealed, recorded, sent to the United States surveyor-general for delivery, subsequently recalled, a new survey made, published in accordance with the provision of the act of July 1, 1864, (13 Stat., p. 332,) approved by the Commissioner of the General Land-Office, and a patent for such resurvey signed, sealed, recorded, transmitted to the United States surveyor-general for delivery, and recalled without the consent of the parties claiming possession thereof, that in such a case the first patent having been legally executed, was the patent to be delivered to the parties in interest, and that said first patent having been legally executed, there was no authority of law for the issue of the subsequent patent, which was void *ab initio*, and might properly be recalled by the Commissioner of the General Land-Office.

A publication by the Surveyor General that a certain survey had been approved, was in itself a sufficient approval, prior to publication, to satisfy the requirements of the act of June 14, 1860, notwithstanding the plat bore upon its face an approval subsequent to said publication.

Only the clearest and most positive evidence can be admitted to set aside the record in a private land claim.

The act of June 14, 1860, required that four weeks should elapse between the first insertion of the published notice and the removal of the plat, etc., from the Surveyor General's Office.

An appeal to the Secretary from the decision of the Commissioner of the General Land-Office brings up for review all orders in a cause, interlocutory or otherwise, made by the latter from the beginning.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., June 12, 1872.

SIR:—I have carefully examined the papers in the case of the rancho Guadalupe, Diego Olivera and Teodore Arellanes confirmees, granted by Juan B. Alvarado, March 21, 1840, confirmed by the board of land-commissioners for California, December 6, 1853, and by the United States district court, September 25, 1855, and appeal dismissed February 5, 1857.

Under instructions dated January 15, 1858, from J. W. Mandeville, United States surveyor-general for California, United States Deputy Surveyor Brice M. Henry made a survey of this rancho; but, a protest against said survey having been filed July 6, 1859, by Diego Olivera, it was set aside and a re-survey ordered, which re-survey, containing 32,408.03 acres, was made in September, 1860, by United States Deputy Surveyor J. E. Terrell, and the survey and plat approved by Surveyor-General Mandeville on the 29th of January, 1861. This survey was, on 31st of May, 1861, certified by said surveyor-general to have been published, for four successive weeks, in the Santa Barbara Gazette, the first publication being on the 14th February, 1861, and the last on the 7th March, 1861; and also in the Los Angeles Star, the first publication being on the 23d February, 1861, and the last on the 16th of March of the same year, the form of said publication being as follows, as shown by a copy certified, in 1870, by United States Surveyor General Sherman Day:

UNITED STATES SURVEYOR GENERAL'S OFFICE,

San Francisco, February 12, 1861.

In compliance with the first section of an act of Congress approved June 14, 1860, regulating surveys of private land-claims, surveyed in pursuance of the thirteenth section of an act entitled "An act to ascertain and settle private land-claims in the State of California," approved March 3, 1851, have been examined and approved by me.

Name of rancho, Guadalupe.

Confirmee, Diego Olivera, *et. al.*

* * * * *

The plats will be retained in this office, subject to inspection, for four weeks from the date of this publication.

JAMES W. MANDEVILLE,

United States Surveyor-General.

On the 23d of May, 1863, John W. Wheeler, clerk of the United States district court for the southern district of California, certified "That due notice by publication, in manner and form as required by law, has been made by the surveyor-general of the United States for the State of California, in the matter of the approved survey of the lands called 'Guadalupe,' confirmed to the claimant in the above entitled cause of *Diego Olivera, et. al., v. The United States;*" and "that the full period of six months from and after the completion of said publication has elapsed, and no objections having been made thereto or filed in my office,

the said approved survey has become final, and the claimant therefore entitled to a patent for the land therein contained." In the same year E. F. Beale, then United States surveyor-general for California, transmitted to this office a copy, duly certified, May 25, 1863, of the plat, field-notes, and other documents in the case, as a basis for the issue of patent, and in those papers the surveyor-general, after stating that the rancho under consideration had been surveyed in conformity with the grant and decree of confirmation, continues as follows :

I do hereby certify the annexed map to be a true and accurate plat of the said tract of land as appears by the field-notes of the survey thereof made by J. E. Terrell, deputy surveyor, in the month of September, 1860, under the direction of this office, which, having been examined and approved, are now on file therein. And I do further certify that in accordance with the provisions of the act of Congress approved on the 14th day of June, 1860, entitled "An act to define and regulate the jurisdiction of the district courts of the United States in California in regard to the survey and location of confirmed private land-claims," I have caused to be published once a week, for four weeks successively, in two newspapers, to wit, the Santa Barbara Gazette, published in the county of Santa Barbara, being the newspaper published nearest to where the said claim is located, the first publication being on the 14th day of February, 1861, and the last on the 17th day of March, 1861; also, in the Los Angeles Star, a newspaper published in the city and county of Los Angeles, the first publication being on the 23d day of February, 1861, and the last on the 16th day of March, 1861, a notice that the said claim had been surveyed, and a plat made thereof, and approved by me. And I do further certify that the said approved plat and survey was retained in this office during all of said four weeks, and until the expiration thereof, subject to inspection. And I do further certify that no order for the return thereof to the United States district court has been served upon me. And I do further certify that under and by virtue of the said confirmation, survey, decree and publication, the said Diego Olivera *et al.* are entitled to a patent from the United States upon the presentation thereof to the General Land-Office, for the said tract of land bounded and described as follows, to wit: (Here follows the field-notes of the Terrell survey.)

It appears from the foregoing that the rancho Guadalupe was properly and finally confirmed, and that it was surveyed by Henry, objected to, and re-surveyed by Terrell in September, 1860. Surveyors-General Mandeville and Beale certify that the plat and field-notes thereof were approved in January, 1861, and duly published, according to law, in the months of February and March of the same year, in the Santa Barbara Gazette and the Los Angeles Star; and the clerk of the United States district court for Southern California certifies, in his official capacity, that all the requisites of the law had been complied with, and that the survey of the rancho Guadalupe was final by publication under the act of 1860.

So far, therefore, as the official records of the surveyor-general's office and courts show, the survey was final. It was so considered by this office, and a patent in accordance therewith, dated June 30, 1866, was prepared, signed and recorded, and sent to the United States surveyor-general for California on the 2d of August, 1866; but said patent was never delivered, the then owner of the rancho, John B. Ward, refusing to accept the same, alleging that the Terrell survey did not conform to the decree of confirmation, and also that it was not final under the act of 14th June, 1850, (12 Stats., p. 33,) the requirements of that act with respect to publication never having been complied with. In this protest Mr. Ward alleges that "on the 29th day of January, 1861, the said surveyor-general filed in his said office an approval of the field-

notes and plat of said rancho, and that subsequently to such filing no publication of such notice of the approval was made in accordance with the provisions of the act of Congress of June 14, 1860, already recited." "That it is true that a notice of the approval of a plat of survey of a plat of survey of a certain tract of land, known by the name of Guadalupe, was published in the Los Angeles Star, the first publication thereof being on the 29th of September, 1860, and the last on the 20th of October, 1860; also, in the Pacific Sentinel, the first publication thereof being on the 21st of September, 1860, and the last on the 12th October, 1860; but the field-notes and plat of the rancho which is the subject of the present memorial, not having been approved until the 29th of January, 1861, the publication above referred to could have had no application thereto; so that, in point of fact, no publication of the approval by the surveyor-general of the Guadalupe rancho, granted to Diego Olivera and Teodore Arellanes, has ever been made according to law."

In support of these allegations there were filed three affidavits:

First. An affidavit signed by John Nugent, one of Mr. Ward's counsel, in which it is stated that, up to July, 1866, no other plat of the Guadalupe was ever exhibited or on file as the official plat approved by J. W. Mandeville, except one with the following inscription:

NOTE.—A notice of the approval of this plat of survey has been published in accordance with the act of Congress of June 14, 1860, in the Los Angeles Star, the first publication thereof being on the 29th of September, 1860, and the last on the 20th of October, 1860; also, in the paper nearest the land, being the Pacific Sentinel, the first publication thereof being on the 21st of September, 1860, and the last on the 12th of October, 1860. This plat has remained in this office subject to inspection from the date of the approval thereof.

Second. An affidavit signed by Vicente A. Torras, who was employed on the Santa Barbara Gazette, in January and February, 1861, and who swears that in those months said paper was published in San Francisco.

Third. An affidavit, signed by S. B. Brinkerhoff, in which it is stated that said affiant "was a subscriber to a paper known as the Santa Barbara Gazette, and that of his own knowledge the place of publication of said paper was in the city of San Francisco, and not in the county of Santa Barbara."

Upon these affidavits this office decided, in letter dated October 22, 1866, addressed to the United States Surveyor General for California, that the publication was not in conformity with the law of 1860, and was, therefore, void. A new survey was ordered, made, and subsequently published under the act of 1864, approved by the Commissioner of the General Land-Office, and patent issued in accordance therewith, which patent was sent to the Surveyor General's office, but recalled before delivery.

Although two witnesses, Torras and Brinkerhoff, swear positively that the Santa Barbara Gazette was, in February and March, 1861, published in San Francisco, Doña Longina Yriarte de Torras, widow of V. I. Torras, one of the publishers in 1861 of the Santa Barbara Gazette, swears that from January 1 to October 17, 1861, said paper was printed at San Francisco, and as soon as printed sent to Santa Barbara for distribution; and M. W. Kimberly testifies that during the years 1860 and 1861 there was no paper published in Santa Barbara county except the Santa Barbara Gazette. There is also filed with these affidavits a copy

of said paper, headed as follows: "Santa Barbara Gazette. Organo de la Poblacion española en California. Santa Barbara, Jueves, 17 de Octubre de 1861." It would seem, therefore, that said paper was printed at San Francisco, but distributed at Santa Barbara, and that Torras and Brinkerhoff must be understood as testifying in effect that in their opinion the place of printing and publication must be identical. With their conclusions, which seem to have materially affected the opinion of this office when the publication of the Terrell survey was rejected, I cannot agree. The paper on its face purports to be published at Santa Barbara, and it was first circulated in that county, and in my opinion a decision from these facts that said paper was published at San Francisco cannot be reached by an interpretation of the word "published" in accordance with its usual and ordinary meaning, nor in accordance with the proper interpretation of the word, as used in the act of June 14, 1860. The design of the publication prescribed by the act of 1860 was to convey to parties in interest notice that their claims had been surveyed, and to afford them an opportunity to file objections and contest said surveys; and that object was as well, if not better, accomplished by a publication in the manner stated than it could have been in any other manner under the peculiar circumstances surrounding the case. That would be sufficient to satisfy the requirements of the spirit of the law, but in my opinion the proceedings in the matter were also in strict conformity with the letter of the act of 1860. In Worcester's Dictionary "publication" is defined as "the act of publishing or making public," &c.; in Webster's Dictionary the same word is defined as "the act of publishing or making known; notification to the people at large, either by words, writing, or printing;" in Bouvier's Law Dictionary "publication" is defined as "the act by which a thing is made public," and "publisher" as "one who by himself or his agent makes a thing publicly known; one engaged in the circulation of books, pamphlets, and other papers;" and the same authority defines "printing" as "the art of impressing letters; the art of making books or papers by impressing legible characters." Many other authorities might be added, but these are considered sufficient to show the marked difference between the generally recognized meaning of the words "published" and "printed," and sufficient also to show that the publication in the case under consideration was properly made under the law; for, while it is admitted that the Santa Barbara Gazette was printed at San Francisco, it is clearly shown that said paper was first "made public" "to the people at large" (*i. e.*, published) in the county of Santa Barbara.

The remaining objections, as heretofore stated, to the publication of the Terrell survey, are that said publication was not made in February and March, 1861, in the Los Angeles Star and Santa Barbara Gazette, as certified by the Surveyor General, but that the publication was made in September and October, 1860, in the Los Angeles Star and Pacific Sentinel, which publication was prior to the date when the plat and field-notes of said survey were approved, on the 29th day of January, 1861. In support of these allegations there is no evidence except the affidavit of Mr. Ward, then owner of the rancho, and of John Nugent, one of Mr. Ward's counsel in the case. The first-named does not positively admit that the survey of the Guadalupe, Diego Olivera, *et al.*, confirmees, was ever published, though he says a certain rancho, called Guadalupe, was published; but Mr. Nugent, in effect, swears that as

late as July, 1866, no plat and field-notes of the rancho under consideration were ever exhibited as the official plat and field-notes approved by Surveyor-General Mandeville, but one which had on its face a note showing said publication to have been made in September and October, 1860, in the Los Angeles Star and the Pacific Sentinel, and also showing the approval of said plat and field-notes to have been made in January, 1861. By this showing it would seem that, even admitting the facts set forth by the ranch owner and his attorney, the Guadalupe survey was final by publication so far as these objections are concerned, as the honorable Secretary of the Interior, in the case of the rancho Tajauta, decided on the 21st of February, 1872, that a publication by the surveyor-general that a certain survey had been approved was in itself a sufficient *approval prior to publication* to satisfy the requirements of the act of 14th June, 1860, notwithstanding the plat bore upon its face an approval subsequent to said publication. But I am not satisfied of the correctness of the facts stated in said affidavits, for the record-evidence of the surveyor-general's office and the district court contradicts said affidavits in every important particular; and let it be once established that the testimony, without cross-examination, of two interested witnesses shall be sufficient to overturn the certificates of three sworn officials of the Government, two surveyors-general, and the clerk of a United States district court having jurisdiction in the matter, and the surveys of the numerous ranchos considered final by publication are no longer fixed upon that firm basis contemplated by the law. Nothing but the most clear and positive evidence ought to be admitted to set aside such a record, particularly when, as in this case, it was acquiesced in by the parties in interest at the date when it was made and for years thereafter.

That the Guadalupe rancho, Diego Olivera et al., confirmees, was published in the Los Angeles Star and the Pacific Sentinel in September and October, 1860, is, in my opinion, not proven; neither is the insinuation in Mr. Ward's protest, that said rancho might have been mistaken for some other rancho Guadalupe, entitled to any weight, for there is but one rancho of that name confirmed to Diego Olivera et al. in the State of California.

A careful examination of the papers in the case upon which this office rejected the Terrell survey, and also the papers filed subsequent to such rejection, leads me to the conclusion that such action was erroneous, and that said survey was properly approved on the 29th of January, 1861, and published in the months of February and March, of the same year, in the Los Angeles Star and the Santa Barbara Gazette, and no objections thereto having been made within the time allowed by law, it became final by publication under the provisions of the act or Congress approved June 14, 1860. (12 Stats., p. 33.) The patent executed in June, 1866, was therefore correctly executed, and is a good and valid patent for the rancho aforesaid, and is herewith transmitted for delivery to the party or parties properly entitled thereto. Said patent having been legally executed, the subsequent patent was without authority of law, and therefore void *ab initio*, and, being now in the possession of this office, will be canceled.

You will give notice of this decision to all parties in interest, allowing sixty days from date of notice for appeal to the honorable Secretary of the Interior, at the expiration of which time, if appeal be taken, you

will forward all the papers in the case, as in other cases of appeal; and if no appeal be taken, you will so notify this office.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

J. R. HARDENBERGH, Esq., *United States Surveyor-General, San Francisco, California.*

DEPARTMENT OF JUSTICE,

Washington, D. C., March 10, 1873.

SIR:—I have considered the questions submitted by you in your communication of the 23d of December last, in relation to the California private land-claim Guadalupe, &c., and have the honor to submit the following reply:

Before beginning that, however, I may say that I have not opened the record, which, at a subsequent period, was transmitted here, in order that, if I should "see proper so to do," I might "find the facts for myself;" partly, because I did not understand that it was your wish that I should so find the facts, and partly because I understand that some important facts at issue are not contained in the record, but depend upon the weight to be attributed to certain affidavits therewith transmitted. I had no desire to complicate myself with questions of fact belonging to another department, and am entirely willing to take these at your hands. I will add that the delay which has occurred in making this reply has arisen from a desire to hear all that might be said in behalf of the claimants, a desire which I understand to be fully shared by yourself.

The questions concern the comparative validity of two patents under the same land-claim, one issued in 1866 and the other in 1870.

The former patent was issued, as was supposed, under the provisions of the act of June 14, 1860. Those provisions, so far as they are material here, required that the surveyor-general of California should cause to be made a survey, and a plat thereof, and thereupon give notice of the same, &c., by publication "once a week for four weeks in two newspapers, one published at Los Angeles and one of which the place of publication is nearest the land, * * and until the expiration of such time the survey and plat shall be retained in his office, subject to inspection."

Advertisement was made in a paper at Los Angeles, and also in the Santa Barbara Gazette. The first insertion in the former paper was on the 23d of February, 1861, and the last on the 16th of March, 1861; in the latter, the like insertions were of February 14 and March 7, 1861. Besides this, the latter paper "was printed in the City of San Francisco, and, as soon as printed, sent to Santa Barbara for distribution, and distributed there," and no other paper was published there.

The patentee refused to receive the patent of 1866, and, upon his remonstrances and suggestions, that patent was recalled, and another survey ordered, the proceedings under which ended in issuing the patent of 1870, which, after it had been signed and sealed, and had been sent to the surveyor for delivery, was, without the consent of the patentee, recalled by the Commissioner of the General Land-Office.

The proceedings ending in the patent of 1866 were *ex parte*. No one objected to their progress. The means of resistance or of correction provided in the act of 1860 were not resorted to. The first notice which the United States had of objection by the claimant was his refusal to

receive the patent, and it is probable that (as is alleged) the first actual notice which such claimant had of these proceedings was the tender of that patent. His reason for refusing it was that it did not cover a large part of the tract claimed.

It seems to me that, if the proceedings terminating in the patent of 1866 were *regular*, there is no way short of an act of Congress of relieving the claimant from the injury which these proceedings may have caused.

The *steps* in those proceedings are: 1. A survey and plat made and returned to the office of the surveyor general. 2. An advertisement for a certain time in certain papers. 3. The retention of the survey and plat in the above office during that time. 4. Liberty for such period to persons interested to have the survey and plat returned into the district court of the United States, for the purpose of being litigated, corrected, or set aside. 5. After such period, the transmission of the plat or the survey to the General Land-Office at Washington for a patent.

After the lapse of the period of retaining the plat and survey in the office of the surveyor-general, without intervention by any party interested, (if the other preliminaries have been duly performed,) there is no provision for making complaint or for correcting the result; and in such case, as seems to me, if any injury has been done, the only appeal left is to Congress.

That there was no power in the district court, before the act of July 1, 1864, or since then, in the Commissioner of the General Land-Office, to grant a re-survey, &c., after such lapse, appears the more clearly by the provision in the fifth section of the act of June 14, 1860, to the effect that, in such case, the plat and survey should, of *themselves*, have the force and validity of a patent issued; *i. e.*, that in such event the case should be considered as *ended*.

A view opposite to this has been called to my attention on behalf of the claimant. In accordance with that, it is said that the action of Mr. Commissioner Wilson, in setting aside the patent of 1866 and granting a re-survey, is analogous to the granting of a new trial by a court—in this, that, after such survey had, it is not competent for any tribunal to set it aside because of any insufficiency in the grounds upon which it was granted.

Prima facie, I should have been disposed, as above, to doubt the power of the Commissioner to grant a *new trial* (as it were) in any case where the proceedings are *regular*. But I am told that the *course of proceeding* in these cases, while pending in the Department of the Interior, renders it unnecessary to consider this point, such *course* being that appeals to the Secretary of the Interior from the Commissioner bring up for review all orders in the cause, interlocutory or other, made by the latter from the beginning. It is also said that the act of 1860, which gives to the district court jurisdiction over issues raised in such cases of surveys, has been repealed by the act of July 1, 1864, and that such jurisdiction at the time that Commissioner Wilson granted a re-survey was vested in the General Land-Office. The reply to this is, that at the time of the passage of the repealing act the district court had lost jurisdiction over this particular case through the imputed *laches* of the claimant, and that so there was then no jurisdiction in the present case to be transferred. It is also urged, in behalf of claimant, that the proceedings upon which the patent of 1866 was

based were *irregular*, because the constructive notice given by the advertisements was defective in the following important particulars :

1. The period of four weeks did not, as required by the statutes of 1860, (?) elapse *between the first and last insertions* of such advertisements.

2. The Santa Barbara Gazette was not a paper published *at Santa Barbara*, within the meaning of the act.

On the first point my attention has been called to many authorities, some in the courts of the United States, and others in those of States. There is some discrepancy among them.

In my opinion, what is required by the statute before me is that the period of four weeks shall elapse between the first insertion and *the act to be done*, (that is, the removal of the plat, &c., from the surveyor-general's office,) which such notice is to precede. Four weeks' notice of that is given by the first insertion in the paper, but the statute also requires that such notice shall be repeated once a week in each week. This conclusion is according to the current of authorities, as I understand them. I have consulted, in this connection, 4th Peters, 349; 16th Howard, 610; 6th T. B. Monroe, 70; 4th Littell, 78; 13th Sm. and Mar., 318; 55th Maine, 190; 14th Indiana, 169; 37th Mississippi, 567, and 5th Nevada, 415, with the numerous authorities cited in the last case.

Upon the *second* point above I have not been able to find any authority. There is weight in what has been forcibly and eloquently urged for the claimant, to sustain his view of the question. Upon the facts found, however, I have not been able to satisfy myself that the statute has not been complied with. I think that, under the circumstances, the Santa Barbara Gazette sustains the character of a paper published *at Santa Barbara*. Although printed at San Francisco, it was forthwith transmitted to Santa Barbara for distribution, and distributed there.

My answer to the four questions propounded at the close of your communication, therefore, are respectively :

1. The Terrell survey is, under the circumstances, final and conclusive.

2. There was no legal authority for issuing the second patent.

3. If there were no such authority, the Commissioner had the power to recall a paper which was only in semblance a patent.

4. The patent of 1866 is the patent to be delivered to the confirmees.

In discussing this matter, I have had the benefit of well-considered and very impressive arguments by counsel for the claimant, and I have thought of the case as one in which injury may have been done to the claimant under the doctrine of constructive notice.

Very respectfully and truly, your obedient servant,

S. F. PHILLIPS, *Solicitor-General*.

HON. COLUMBUS DELANO, *Secretary of the Interior*.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., March 26, 1873.

SIR:—I have carefully considered the papers accompanying your letter of 16th September last, in the matter of the survey of the California private land-claim Guadalupe, Diego Olivera *et al* confirmees.

I deemed it proper, on the 23d December last, to consult the Department of Justice as to what seemed to me the controlling questions in the case, and on the 11th ultimo, at the instance of Hon. J. S. Black,

of counsel for the appellants, all the papers were transmitted, in order that, if seen fit, the facts might be examined as well as the law.

The Solicitor-General, on the 10th instant, rendered an opinion on the subject, a copy of which is herewith enclosed. It fully sustains the action of your Office. Your decision is, therefore, affirmed, and the papers are herewith returned.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 484.

LOMPOC CONTEST.

1. A *sobrante* grant founded upon a public sale of mission property, if of any validity at all, was one of the weakest titles known to the Mexican law.

2. The act of June 14, 1860, (12 Stats., p. 33,) rests upon constructive statutory notice, and should be construed strictly as against parties claiming under it.

3. The provision of the act relative to the publication of the survey, viz: "Once a week for four weeks, in two newspapers," requires a simultaneous publication, *i. e.*, publication for four weeks in each of two newspapers, without the intervention of any time between the close of one and the commencement of the other.

4. After a survey had been approved under said act by the Surveyor General, that officer was *functus officio*, and his successor could not change the plat in any particular. His only duty or power was to publish it under the act.

Decision by the acting Secretary, July 23, 1873.

No. 485.

RANCHO EL CAJON.

Decree of Supreme Court, December 7, 1868. Survey approved by Surveyor General, October 18, 1858. Published after act of 1860, and republished in 1868 under act of 1864. No exceptions were filed to the first publication, and it was never taken to court.

January 9, 1869, Rancho claimants filed exceptions.

Held—That the survey did not conform to the decree, and that it was not a finality. The act of 1851, (9 Stat., 633, Sec. 13,) and the act of January 4, 1836, (5 Stat., 107, Sec. 1,) give to the Commissioner of the General Land-Office supervision over the surveys of Surveyor General.

Repeals by implication are not favored. Both statutes must stand if they are not inconsistent. (Sedg. Const. and Stat. Law, 123-5.)

The supervision of the Secretary extends to all matters over which the Commissioner has jurisdiction. (*Maguire v. Tyler*, 1 Black, 185.)

This survey has not been approved by Commissioner. Refers to practice of the Land-Office as to approval. Contestants are not estopped in deed, because they are not parties or privies. (Wash. R. P., Vol. 2, 472. 2 Hill, R. P., 421. 1 Phillips, §367, 368. Starkie on Ev., 463. 1 Greenl. on Ev., 23.) Not estopped *in pais*, because settlers had not been misled by them.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 15 March, 1872.

SIR:—I have examined the case of the contested survey of the Ran-

cho El Cajon, on appeal from your decision of August 4, 1871, directing a new survey.

The claim in satisfaction of which a new survey is sought was confirmed by the Supreme Court of the United States, at its December term, 1858, referring to the confirmation of the board for specific boundaries. An order of the district courts having been entered, allowing the parties to proceed as under final decree, a survey was made, which was approved by the Surveyor General, October 18, 1858. After the passage of the act of June 14, 1860, this survey was published in the same manner as surveys made subsequently to the passage of this act. It was also republished in 1868, under the act of July 1, 1864. No exceptions were filed to the first publication, and it was never taken into court.

On the 9th day of January, 1869, Isaac Lankersheim, one of the then owners of the ranch, for himself and the other proprietors, filed objections to the official survey made in 1858, alleging that the same was incorrect, and asking that a new one be ordered. November 11, 1869, D. Lamb and others filed a protest against the change asked for, alleging that it would effect certain pre-emption rights which they had acquired on land south of the southern line of the present survey.

Upon an examination of the papers transmitted to your office, you decided that the survey in question was inaccurate and not in conformity to the decree of confirmation, and accordingly directed the Surveyor-General of California to cause a new survey of the tract to be made. From this decision, an appeal has been taken to the Department.

The facts upon which you based your decision are fairly and clearly set forth in your letter to the Surveyor-General, and justify your conclusion that the survey of 1858 was not in accordance with the confirmation of the Court. An inspection of the *deseño*, map of official survey, and the two maps filed by the parties to the controversy, show at a glance that the official survey differs very materially from the others in form and general outline. This variation is shown more clearly by a reference to the record of the juridical possession, which follows the *deseño*, and in substance agrees with the other two surveys. One call of the juridical possession, entirely ignored in the official survey, is especially noticeable. Beginning at a point on the east of the land granted, the magistrate giving possession followed a westerly course for five thousand varas to "*the houses*," and thence across the ranch to its western boundary. The call referred to, is for a southern boundary, ten thousand varas south of "*the houses*."

At the time of the delivery of juridical possession, there were only three places in the ranch where houses could have been found. One of these is placed by Hays entirely outside of his survey, while a line running directly south ten thousand varas from either of the other two points, would extend several miles south of his southern line.

I agree with you that this survey does not conform to the decree of confirmation, and that a new one should be made. In affirming your decision to this effect, I deem it expedient to refer briefly to several questions of law involved and argued at considerable length by counsel for the contestants in the appeal taken to the Department.

It is contended that the survey of 1858 is a finalty, and that the Department has now no power to alter or modify it, or order a new one.

The act of March 3d, 1851, (9 Stat., 633, sec. 13,) taken in connec-

tion with the act of July 4, 1836, (5 Stat., 107, Sec. 1,) gave to the Commissioner of the General Land-Office a jurisdiction to examine, review and correct surveys of confirmed Mexican grants, or to order a new survey in case it should appear that the one already made did not conform to the decree of confirmation. This jurisdiction was continually asserted and exercised by the Commissioner, from the first confirmation of Mexican claims in California, until the passage of the act of June 14, 1860, which in express language reserved the power of revision to the courts of the United States. The position that the act of 1851 operated as a positive repeal of the act of 1836, that thereafter the approval of surveys by the Surveyor General made them final and conclusive, and that the Commissioner thereafter acted only ministerially in issuing a patent, is not tenable and cannot be supported. It is contrary to the spirit of our land laws, offends against long established usage, and is not justified by a reasonable construction of the two acts. A subsequent statute repeals a prior one by implication, only when in its terms it is clearly repugnant to and cannot be reconciled with it, or when such a construction is necessary in order to give effect to the evident intention of the Legislature in such later statutes, (Sedg., on Stat., and Cons. Laws, pp. 123, 124, 125,) and the leaning of the courts is always against a construction, in favor of repeal, when the two acts can possibly stand together. Now, there is nothing inconsistent in these two acts; they in fact aid and supplement each other, and there is, therefore, no repeal of one by the other. The former gives a power of supervision and control over private land grants to the Commissioner. The second provides that upon presenting to the Commissioner a duly certified plat of official survey by the Surveyor General, a patent shall issue to the claimant. The intent was not to make such survey a finality and binding upon the Commissioner, but merely to provide that, in due course of business, after receipt of the plat of survey, a patent should issue to the claimant.

Taking the two acts together, and I am clear that they confer the power of supervision upon the Commissioner.

This power of supervision vested in the Commissioner, necessarily carries with it a right of appeal to the Department. On this point the Supreme Court, in *Maguire v. Tyler, et. al.*, (1 Black, 202,) says:

"By the act of July 4, 1836, re-organizing the General Land-Office, plenary powers were conferred on the Commissioner to supervise all surveys of public lands, and also such as relate to private claims of land and the issuing of patents."

"By the act of March 3d, 1849, the Interior Department was established. The 3d section of this act vests the Secretary, in matters relating to the General Land-Office, including the powers of supervision and appeal, with the same powers that were formerly discharged by the Secretary of the Treasury."

"The jurisdiction to revise on appeal was necessarily co-extensive with the powers to adjudge by the Commissioner."

See also opinion of Attorney-General Stanbery, of September 3d, 1867. (12 Opins., 258.)

At the date of the passage of the act of 1860, therefore, the Hays survey having been returned approved by the Surveyor-General, your predecessor had power to revise and correct the same, or order a new one, subject in each case to an appeal to the Secretary.

The act of 1860 did not apply to the survey in controversy, being confined in its operation to surveys approved subsequent to its passage,

or those approved prior to its passage, which at the date of the act had been returned into court, or in reference to which proceedings were then pending therein for contest or reform. (*United States v. Sepulveda*, 1 Wallace, 104.) The publication under it was therefore entirely inoperative to make this survey final, or remove this jurisdiction of the Department.

The act of July 1st, 1864, (13 Stat., 332,) which repealed that of 1860, and vested again a power in the Department to revise these surveys, found the survey in controversy still pending in your office. This act extended (see section 2) to all surveys theretofore made which had not been at the date of the act approved by one of the district courts of the United States, or by the Commissioner of the General Land-Office. It is contended that the survey in contest had been approved by the Commissioner prior to the passage of this act, and that it is not, therefore, affected by it. The survey of Hays has never been approved by the Commissioner according to any of the regular forms and customs of the General Land-Office. The act of 1864 required an approval, an endorsement by the Commissioner on the plat. The acts of 1836 and 1851 did not require this formality, and it was never done prior to the act of 1864. When the Commissioner desired to approve a survey, he addressed a letter to the Recorder of the General Land-Office, and the President's Secretary to sign patents, requesting their signatures to a patent prepared in his office and approved by him. These acts were never performed with reference to the survey in question, and the mere fact that in the usual course of business a patent had been made out and recorded, though never in fact signed, is not such an approval as would take it out of the provisions of the act of 1864. This question, however, is of minor importance in the consideration of the case, for even if the jurisdiction of the Department failed under the act of 1864, it would still remain under the acts of 1836 and 1851.

It is also argued that the present claimants are estopped from denying the accuracy of Hays' survey, *by deed*, in that the conveyances under which they originally derived title described the land by following the lines of such survey; and by matter *in pais* in that such purchase and their occupancy have misled settlers in making selections. Neither of these positions is tenable. A deed only operates as an estoppel upon, and can be taken advantage of by parties and privies in law, blood or estate. (Wash. Real Prop., Vol. 2, p. 472, 2d Ed. Hillard Real Prop., 521. 1 Phillips on Ev., ss. 387, 368. Starkie on Ev., p. 463. 1 Greenleaf on Ev., p. 23, Note. 4 Peters, 82. *Carpenter v. Buller*, 8 M. & W., 209.) The contestants are neither parties nor privies to the deed, and cannot therefore plead *in estoppel*. With reference to an estoppel *in pais*, the evidence shows clearly that although the early conveyances of the rancho describe the land by the lines of Hays' survey, yet as soon as the south line of the same was actually located by a surveyor in 1869, the purchasers disclaimed holding by that line, and obtained new conveyances, remedying the prior inaccurate description. It is also shown that with but one single exception, all the contestants settled on the land subsequent to the protest of the ranch owners against the Hays survey, and their request that a new one should be made, and that one of the owners has, since his purchase in 1868, occupied land south of the southern line of such survey. It is evident that no circumstances exist that can raise an estoppel *in pais*.

I therefore affirm your decision, and return herewith the papers transmitted with your letter of January 12th, 1872.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land Office.*

No. 486.

THOS. H. DOWLING.

Goat Island. Held—That the claimant not having presented his claim to the Board provided by the act of 1851, was not entitled to a patent. Secs. 8 and 13, act of March 3, 1851. (9 Stat., 633.) *Fremont v. U. S.* (17 How., 553.) *Beard v. Freley.* (3 Wall., 490.)

Decision by Acting Secretary Cowen, May 3, 1872.

No. 487.

RE-SURVEY OF PRIVATE LAND CLAIMS IN DISTRICT COURT,
UNDER ACT OF JULY 1, 1864.

Held—That re-surveys ordered in the District Court, after the passage of the act of July 1, 1864, are subject to the supervision of the Commissioner of the General Land-Office, but those made before the passage of the act are not.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 3d July, 1872.

SIR:—I have considered the question propounded in your letter of the 4th instant, relating to the construction of the 2d and 3d sections of the act of July 1, 1864, to expedite the settlement of titles to land in the State of California. You state that there is a considerable number of surveys which were made and ordered into the District Court prior to the passage of said act, some of which were rejected by said court prior, and some subsequent to the passage of said act, and you inquire whether the approval of a re-survey, returned into court and approved after the passage of the act, is final, or whether such new survey is under the supervision of the Commissioner of the General Land-Office, as it would have been had it been ordered by the Circuit Court after the passage of the act.

The 3d section allows an appeal in certain cases from the District to the Circuit Court, and gives the Circuit Court power "to order the case back to the Surveyor General for a new survey." When this is done it provides that the new and "subsequent survey of the Surveyor General shall be under the supervision of the Commissioner of the General Land-Office, and not of the District or Circuit Court of the United States.

The word district, as well as circuit court being used, must be construed to have some meaning. It will not be presumed that it was used without any signification, and I can see no object in making use of it, in the connection in which it stands, unless it was intended to mean that the district, like the circuit court, should not supervise a new survey made by its order, but the same should be under the control of the Commissioner of the General Land-Office.

This construction gives effect to all the words of the act. The circuit

court is clearly deprived of the power to supervise the subsequent survey.

If that is a wise provision when applied to the circuit court, it would seem to be a wise one when applied to the district and inferior courts.

On the whole I am of opinion that those new surveys which have been ordered by the District Court, after the passage of the act, (July 1st, 1864,) are subject to the supervision of the Commissioner, and that those which have been ordered before the passage of the act are not subject to his supervision.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 489.

RANCHO SAUSAL REDONDO.

The original claim was for four square leagues. The Board of Land Commissioners, June 19, 1855, confirmed it for five square leagues, and the United States District Court for the Southern District of California, at its December term, 1856, confirmed the decision of the Board, and afterwards recited that, "Provided the lands contained within said boundaries do not exceed eleven square leagues, then confirmation is hereby made for that quantity and no more within said boundaries, but if a less quantity be contained within said boundaries, then confirmation is hereby made to such less quantity."

Held—That the Hansen survey, including five square leagues, made under the act of July 23, 1866, (14 Stats., p. 220,) should be approved and the Thompson survey for eleven square leagues, made under the act of 1864, and purporting to be within the confirmed boundaries, should be rejected.

Decision by the acting Secretary, October 31, 1871.

No. 490.

RANCHO NIGUEL.

The grant, juridical survey and decree of the Board of Land Commissioners agree in the description of three boundaries of this claim, but differ each from the others as to the northern boundary.

The final decree on title affirmed the decision of the Board, and added, "it is further adjudged and decreed that the claim of the above named appellees is good and valid, and the same is hereby confirmed to them to the extent of three square leagues of land, and no more, within the boundaries described in the grant and in the map to which the grant refers; provided, that if the quantity of land within said boundaries should be less than three square leagues, then confirmation is hereby made of such less quantity."

Query. Shall the decision of the Board, affirmed by the decree of court, or the quantity specified in the decree of court, and the grant, and map referred to therein, govern as regards boundary?

Held—That the Board of Land Commissioners had jurisdiction both of questions relating to the genuineness of the grant and to its location and boundaries.

That, where a map or plat is referred to in a deed it has the same force to explain, though not to vary, said instrument as if it had been copied at length therein, and the same rule applies to documents recited in a decree of the district court.

That, in this case, the mention of quantity and special references in the decree of the United States District Court were intended to govern the general affirmance of the decision of the Board of Land Commissioners from which appeal had been taken.

That where the grantees were directed by the grant to "solicit the respective judge to give them juridical possession by *virtue of this title by which* the boundaries shall be marked off" said officer had no authority for measuring any land outside of the natural objects clearly set forth in the grant.

Decision of the General Land-Office, dated July 9, 1872—no appeal taken.

No. 491.

RANCHO RIO DE SANTA CLARA.

The Secretary of the Interior has the right to affirm or rescind the order for a new survey of a private land claim in California under the acts of 1851 and 1864 made by his predecessor, and that with due regard to the interest of all concerned, and subject to the rules of practice in his Department, he is at liberty to consider any evidence that may aid him in reaching a correct conclusion.

No opinion is expressed as to his power to set aside an order made by a predecessor finally approving a survey.

All preliminary or interlocutory decisions, after the Commissioner acquires jurisdiction and before final judgment, are subject to review or reversal by the Secretary on appeal.

DEPARTMENT OF JUSTICE,

Washington, August 2, 1872.

HON. C. DELANO, SECRETARY OF THE INTERIOR:

SIR:—I have the honor to acknowledge the receipt of your letter of the 30th ult., submitting certain inquiries for my opinion, to the consideration of which the following are the material facts as stated by you:

In September, 1867, a survey was made of the Rancho Rio de Santa Clara, in California. Due advertisement of this survey was made in November and December of the same year. Exceptions were made to it, and overruled by the Surveyor General. The papers were forwarded by him to the Commissioner of the General Land-Office, with the recommendation that a patent issue to Valentine Cota *et al.*, confirmees under the act of July 1, 1864. (13 Stat., 332.)

This survey was approved by the Commissioner. An appeal was taken to your immediate predecessor in office, by whom, on the 15th of June, 1870, that survey was disapproved and a new one ordered, in which the boundaries of the claim were described. No new survey has been made. You inquire as follows:

"1st. Does the action of my predecessor conclude me from entertaining the motion for a rehearing, and am I bound by his decision, although my own judgment may not agree with his?

"2d. Does the fact that the parties in interest have submitted new and material evidence, which would probably have changed the decision

of my predecessor had it been before him, justify me in entertaining the motion for a rehearing, although it may be doubtful whether such new evidence is technically such newly discovered evidence as could not have been known by the use of due diligence?"

Provision is made for the survey of private land claims in California by said act of July 1, 1864. When the surveyor-general of that State has acted in reference to such a survey, according to the directions of the act, he is required to transmit the papers and proofs filed with him, with his opinions thereon, to the Commissioner of the General Land-Office, who is empowered to approve or disapprove the survey made, or to direct a new survey. When a survey made in conformity to the directions of the Commissioner has been approved by him, it is made his duty, as soon thereafter as practicable, to cause a patent to be issued to the claimant of the land. To decide the question submitted by you it is not necessary to decide what power, if any, the Commissioner has, after he has finally approved a survey, to modify or reverse that decision. But my opinion is, that the Commissioner has power to make any order or decision he may deem proper, and at pleasure to modify or reverse orders and decrees made by himself or his predecessor, prior to the decision by which the survey is finally approved.

All preliminary or interlocutory decisions, after the Commissioner acquires jurisdiction and before final judgment, are open to review or reversal. To obtain a survey that can be finally approved is the object of all the proceedings, and nothing is accomplished for the benefit of the person owning the land until that end is attained. On appeal, your predecessor, as it appears, disapproved the survey of the land in question, which had been approved by the Commissioner, and ordered a new survey. Justice Catron says, in delivering the opinion of the court in *Maguire v. Tyler*, (1 Black, 202,) "that the jurisdiction to revise on appeal was necessarily coextensive with the powers to adjudge by the Commissioner," and therefore, if my views as to the powers of the Commissioner are correct, it follows that you are at liberty, for any reasons satisfactory to yourself, to adopt or reverse the order for a new survey made by your predecessor. Should the new survey be made as ordered, you certainly have the power, if the subject is properly presented, to disapprove it, and so in effect reject the order of your predecessor, and it is obvious that no such circuitous action is necessary to reach that result if you are now satisfied, from new evidence or otherwise, that the order was erroneous and ought not to be executed.

I hold, therefore, that you have the right to affirm or rescind the order for a new survey made by your predecessor, and that, with due regard, of course, to the interest of all concerned, and subject to the rules of practice in your Department, you are at liberty to consider any evidence that may aid you in reaching a correct conclusion. I express no opinion as to whether or not you have the power to set aside an order made by a predecessor in office finally approving a survey, though the cases of *Maguire v. Tyler*, (1 Black, 202,) and *Maguire v. Tyler*, (8 Wallace, 650,) would seem to countenance the existence of that power.

Very respectfully, your obedient servant,
GEO. H. WILLIAMS, *Attorney-General*.

No. 492.

RANCHO LAGUNO DE LA MERCED.

The Spanish square league, by the old standard used by the Surveyor-General for California, included $4340\frac{2}{3}$ English acres, but by the new standard, $4438\frac{4}{5}$ acres.

Held—That the decree of court confirming this claim for half a square league, having been made after the new standard was in force, said half league should include $2219\frac{4}{5}$ acres.

Decision of the General Land-Office, May 3, 1872; affirmed on appeal, September 2, 1872.

No. 493.

RANCHO LA BREA.

Held—That the General Land-Office had jurisdiction to examine the validity of the conveyances of a rancho, so far as to be enabled to decide who, under such conveyances, was entitled to select the quantity of land confirmed within larger exterior boundaries to the claimant or claimants by the board of land commissioners for California, or United States courts.

Decision affirmed on appeal March 21, 1873.

No. 494.

RANCHO LA CARBONERA.

In this case a portion of the ranch, as granted, conflicted with the boundaries of the Rancho Cañada del Rincon, which had been confirmed and patented by the United States. Both ranchos were for quantity within larger exterior limits, and prior to confirmation the title in each case was equitable only, the claimant of neither having received juridical possession from the Mexican authorities. The record showed that the Rancho La Carbonera had the older grant, and under the doctrine of relation as laid down in *Grisar v. McDowell*, (6 Wall., 380,) and *Lynch v. Bernal*, (9 Wall., 315,) it had also the older confirmation. The Supreme Court of the United States having also ruled, in *United States v. Amijo*, (5 Wall., 444,) that the right of selection could not be exercised so as to defeat the equitable prior rights of others, it was held that La Carbonera having the older grant and confirmation, had the prior equity, and was therefore first entitled to select its quantity of land, and that for the land thus selected within its exterior boundaries and interfering with the Rancho Cañada del Rincon, a patent should issue reciting said interference.

Decision affirmed on appeal May 21, 1873.

No. 495.

"MISSION OF LA PURISIMA."

The decree in this case confirmed the title of the "church and building occupied as a dwelling adjoining it, constituting the church and mission buildings of the Mission of La Purisima," * * "together with the land upon which the same are erected, and the court-yard

fenced in adjoining the buildings in the rear, and the curtilage and appurtenances thereunto belonging."

Held, that two vineyards did not pass to the said mission under the general designation "curtilage and appurtenances."

Decision of the Commissioner, June 16, 1873. No appeal.

No. 496.

EX-MISSION OF SAN BUENA VENTURA.

The survey of the ex-mission San Buena Ventura is not in compact form, and that so much thereof as is east of the Mupu Creek is erroneous, it having been within the exterior boundaries of the rancho Sespe.

Sales are to be treated as selections in those private land claims in California where confirmation has been made for quantity within larger exterior boundaries, and that an agreement before survey to convey a part of such a grant will be treated as a selection.

Lands selected outside of such a claim may be abandoned by the claimant and another selection made within the grant, and including the claims of settlers, where the record does not show that the claimant had notice of such settlements, or that he had made the first selection for the purpose of inducing such settlements.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., August 1, 1873.

J. R. HARDENBERGH, Esq., U. S. Sur. Gen., San Francisco, Cal.

SIR:—I have had under consideration the papers in case of the lands of the ex-mission of San Buena Ventura.

On the 8th day of June, 1846, Pio Pico, then constitutional governor of the Californias, sold to José Arnas the above-mentioned lands upon conditions, the second of which was that "from this day he shall furnish on his own account the means for sustenance and clothing of the father minister, who shall at all times reside there, and for the conservation of divine service leaving for the benefit of said father the room which he occupies," and the fourth of which was that the "church buildings and all other appurtenances thereto belonging shall be excepted from the above rule." On the 17th of March, 1848, Arnas delivered to the Roman Catholic church at San Buena Ventura, a rancho by the name of Laguna, consisting of two leagues, more or less, together with a vineyard and orchard and personal property, "in fulfillment of the 2d article of the contract of sale of said Mission;" and by deed, executed Nov. 10, 1852, Arnas conveyed all his interest in the lands of the Mission aforesaid to Manuel Antonio Rodríguez de Poli.

On the 11th of Nov., 1852, Poli presented his claim to the board of land commissioners for California. On the 15th of May, 1855, the board confirmed the claim to the extent of twelve square leagues, and on the 1st of April, 1861, the district court also rendered a decree in favor of the claimant, but restricted the claim to eleven square leagues, and no more.

Three appeals from this decision were taken to the Supreme Court of the United States, upon the last of which said court issued a mandate at its December term, 1868, affirming the decree of the United States district court of April 1, 1861, and ordering "that all orders and proceedings in said district court in said cause subsequent to the said decree of April 1, eighteen hundred and sixty-one, be reversed," which

said mandate was filed in the United States district court, and on the 1st day of June, 1869, the court made its decree in accordance with said mandate, the description of the land confirmed, as described in the decree of April 1, 1861, being as follows:

"The land of which confirmation is made is situated in the county of Santa Barbara, and known as the Mission of San Buena Ventura, and which were known as belonging to the Mission, including the Laguna, Huenemo, el Palo Alto, los de Siembras, de Santa Paula, la Canada de la Mission, and all those lands which at the date of the grant in this case had not been granted by the Mexican government, and were then recognized as lands of the Mission establishment, excepting the orchards, vineyards, churches, and buildings belonging to the said Mission at the date of the grant, to the extent of eleven leagues within said boundaries, and no more."

It is difficult to determine with exactness the limits of the ex-mission of San Buena Ventura, but from information furnished in the case it seems United States deputy surveyor G. H. Thompson, and R. C. Hopkins, keeper of the archives in the office of the United States surveyor general for California, after a personal examination, and Surveyor General Upson, after a full consideration of their reports, each was of the opinion that the Mission was of a triangular shape, including on the north a part of the rancho El Rincon, all of the ranchos Santa Ana and Ojai, and a tract of land north of the Sespe ranchos, which is bounded on the north by a line from the northeast corner of Sespe to the northeast corner of Ojai; including on the east the ranchos Sespe, Las Posas, Calleguas, and Guadalupe, and having for a boundary on its other side the Pacific ocean. These lines are probably as accurate and satisfactory as any that could be run, and I therefore adopt them as the true out-boundaries of this ex-mission, within which the eleven square leagues must be selected.

A survey within these exterior boundaries was made by United States Deputy Surveyor Thompson in July, 1869, and published in accordance with the act of July 1, 1864, for four weeks, in the Santa Barbara Press, the first publication being on the 22d of November, 1869; and for four weeks in the Alta California, the date of the first publication being November 12, 1869; whereupon objections were filed, and a plat and field-notes of said survey and the objections and testimony relative thereto were transmitted to this Office for consideration. With the exception of the objections filed in behalf of the rancho Canada Larga, which it is not necessary now to consider—the survey of that rancho having been finally settled and a patent issued thereon—the objections to the present survey of the ex-mission San Buena Ventura are as follows:

1st. That the parties in interest had previously made another and different selection of the lands to which they were entitled, by reason of which parties were induced to settle upon lands then excluded, but now included in the selection of the grant-owners.

2d. That the original grantee of the ex-mission sold a part of said lands, which part has not been included in this selection.

3d. That so much of said selection as is east of the *Mupu* creek is erroneous, it having been within the exterior boundaries of the rancho Sespe.

4th. That the present survey is not in compact form.

In support of the first objection numerous settlers file affidavits to

the effect that the owners of this ex-mission formerly claimed their lands south of the Santa Clara river, and made improvements at a place called Huenema. This may be admitted without affecting the rights of the ex-mission claimants. Huenema, as appears by the report and maps received from the surveyor-general of California, is wholly within the limits of the rancho Rio de Santa Clara, which has been patented by the United States; and being thus included, was not included among the lands confirmed to de Poli; the effect of that confirmation being to limit the grantee to eleven square leagues, to be selected out of the lands which at the date of the grant "had not been granted by the Mexican government, and were then recognized as land of the Mission establishment, excepting the orchards, vineyards, churches and buildings," belonging to said Mission at that date. A selection of the land which belonged to the rancho Santa Clara was in no sense a selection of the land confirmed to de Poli, and cannot prejudice said de Poli or his legal representatives in his or their subsequent selections unless "it were clearly shown that the first selection was made for the purpose of inducing parties to settle and improve lands north of the river Santa Clara." No such facts are shown by the evidence, nor is it proven as a part of the *record* that the owners of the ex-mission at the date of their selections knew of the settlements made by any of the settlers within the limits of the present survey.

As to the second objection, there can be no doubt but that a place called Laguna was supposed to have been sold to Arnas; nor is there any doubt but that a place of that name was actually sold by Arnas to the Roman Catholic church authorities, now represented by Bishop Arnat. The fact of the sale of this place by Arnas is clearly set forth in the record before the court, a printed copy of which is on file in this Office, and we have seen that such a place is described as part of the ex-mission in the final decree of confirmation. The exact location of this tract is not clearly shown, but if it or any part of it is not within the limits of some valid grant by the Mexican authorities, made prior to the sale of the ex-mission to Arnas, it is clear that such part was a selection by the original grantee. As to the part of said lands which may be within the limits of other valid private land claims, I am clearly of opinion, as before expressed, that it was not granted or confirmed as a part of the ex-mission, and hence that he has no authority under the sale to sell the same; and having no power to sell, no attempt to sell could be construed as a selection by him, under the well-established ruling that sales are to be treated as selections in those California private land claims where confirmation has been made for quantity within larger exterior limits. Though in this case, Arnas, after the sale of Laguna to the church authorities, sold to de Poli only his (Arnas') interest in this ex-mission, it has been shown that said tract was included in the decree of confirmation for the land from which eleven square leagues was to be taken, and hence I am clearly of the opinion that the confirmer and his assigns are bound to recognize as a part of their claim such parts of Laguna as by reason of the sale aforesaid would have been valid selection as against their grantor, Arnas.

The objection to this survey because it extends east of the Mupu creek, over land within the exterior boundaries of the grant to the rancho Sespe, but since excluded from the final survey of that rancho as patented, does not seem to me to be entitled to much weight. The courts of the United States have determined that the Sespe was a grant

for quantity within larger exterior limits, and it must therefore be presumed that at the date of the sale of the ex-mission the *surplus* land inside the Sespe exterior boundaries, after the segregation of the area granted, was understood to be and recognized as a part of the Government lands; and if, therefore, it was included within the Mission limits, as in this case, it would, in my opinion, pass under the general description of "lands which at the date of the grant of the ex-mission had not been granted by the Mexican government, and were then recognized as a part of the Mission establishment."

That the survey of the ex-mission San Buena Ventura is not in compact form is evident from an inspection of the plat of said survey now before me, there being no reason shown by the record why the large tract of land lying immediately southeast of the rancho Canada Larga y Verde was excluded from said survey.

An additional question relative to the ex-mission remains to be considered.

On the 19th day of April, 1864, the United States surveyor-general for California approved a survey of the Canada Larga y Verde, having for its northern boundary a part of the ex-mission San Buena Ventura; but said survey was objected to by Thomas A. Scott, on the ground that the claimants at the time of the survey were not allowed to select the quantity of one and one-half square leagues within the exterior boundaries of the grant, and said objection having been found by this Office to be supported by the proof presented, the surveyor-general was directed to make a new survey of the Canada Larga, in accordance with the selection of the owners thereof.

Subsequently, however, and before the new survey had been made, E. Conway, president of the San Buena Ventura Commercial Manufacturing and Mining Company, in behalf of the ex-mission owned by said company, filed in this Office an agreement, under seal, between certain owners of the ex-mission of the first part and the owners of the rancho Canada Larga of the second part, by which it appears that the parties of the first part agreed to convey to the parties of the second part, on demand, after the issue of patent to the ex-mission, one equal undivided half of the tract of land situated in Santa Barbara county, California, and bounded and described as follows: "On the north by a line extending easterly from the east line of the Santa Ana rancho along the Conchillo or top of the Azufre mountains, the same being an agreed boundary line between the owners of the rancho known as the 'ex-mission of San Buena Ventura;' south by a line drawn due east from the southeast corner of the said rancho Santa Ana, according to the approved official survey thereof; west by the eastern line of the said rancho Santa Ana, and east by a line drawn north and south so as to embrace and include within such boundaries one and one-half leagues of land, excluding and excepting therefrom all that portion of the rancho Canada Larga which is included in said boundaries by the survey thereof, shown in the approved plat of the said 'ex-mission.'" "And," continues the agreement, "the parties of the second part, in consideration of the foregoing, agree with the parties of the first part that after the issuance of the patent for the lands of the ex-mission, including the lands above described, and that simultaneously with the delivery to them of the conveyance first hereinbefore provided for, they, the parties of the second part, will convey to the parties of the first part the equal, undivided half of the rancho Canada Larga y Verde, being one and one-half

leagues of land as surveyed and approved by the United States surveyor general for California, under date of April (19, 1864) nineteen, eighteen hundred and sixty-four, excepting therefrom certain lands reserved in a conveyance of the rancho Larga by one Moraga to Levi Parsons, in December, 1864."

Relative to the foregoing, this Office held by decision of August 9, 1872, that the said agreement bound the owners of Canada Larga, and was equivalent to a selection by them, and that the survey of that rancho, as described in said agreement, must stand as the final survey of the rancho. From that decision appeal was taken, and on the 17th of December, 1872, the honorable Secretary of the Interior, by letter of that date, affirmed the decision dated August 9, 1872, of this Office, whereupon the surveyor-general, being advised, made the proper return, and a patent issued on the 26th of March, 1873, in accordance with said survey. It is clear to this Office that the agreement aforesaid was as binding upon the owners of the ex-mission as upon the owners of Canada Larga; and it is, therefore, held that whatever change may be made in the present survey of the ex-mission, the owners of the said lands must include as a part of their selection that certain tract, an interest in which they have contracted to convey to the owners of Canada Larga y Verde.

In accordance with the foregoing fact and the conclusions drawn therefrom, the survey now before me of the lands of the ex-mission of San Buena Ventura is hereby rejected by this Office, and a new survey of said lands will be made, as follows:

1st. The survey shall include all that part of the tract known as Laguna which is not included within the confirmed limits of any grant from the Spanish or Mexican governments.

2d. The remainder of the eleven square leagues to which the claimants are entitled must be selected in one tract and in compact form, so as to include the tract of land described in the agreement before mentioned as bounded on the north by a line running east from the east line of the rancho Santa Ana along the top of the Azufre mountains; south by a line due east from the southeast corner of Santa Ana rancho; west by the eastern line of said rancho, and east by a due north and south line, so as to embrace within said boundaries, as more particularly described in the quotation from said agreement above given, the quantity of one and one-half leagues of land: *Provided*, That if any of the land within these boundaries shall be found to include lands heretofore patented to the rancho Canada Larga y Verde, the land so included shall be excluded from the survey of the ex-mission San Buena Ventura hereby ordered: *And provided further*, That the selection of the eleven square leagues, as aforesaid, shall not be made so as to include any land embraced in the approved survey of any private land claim which has been patented by the United States.

You will give notice of this decision to all parties in interest, and allow sixty days from the service thereof for appeal to the honorable Secretary of the Interior, at the expiration of which time, if appeal be taken, you will make the usual return, but if no appeal be taken you will proceed to execute said decision.

In the meantime, please acknowledge the receipt of this communication.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 18th, 1874.

SIR:—I have considered the appeal from the decision by your office in the matter of the contested survey of the lands of the ex-mission of San Buena Ventura, Santa Barbara county, Cal., finally confirmed by the Supreme Court to Manuel Antonio Rodriguez de Poli, at the December term, 1868.

The decision of your Office correctly recites the facts, and, in my opinion, properly applies the law of the case thereto with one exception.

One of the objections urged before your office to the survey in question was its extension in an easterly direction beyond the Canada of the Arroyo Mupu, it being claimed that said Arroyo was the exterior western boundary of the rancho Sespe, an earlier grant, and that as the confirmation of the San Buena Ventura excepted all lands that at the date of that grant had been granted to other parties by the Mexican government, the lands in question were improperly included in the survey.

With reference to this point you say: "The objection to the survey because it extends east of the Mupu creek, over lands within the exterior boundaries of the grant to the rancho Sespe, but since excluded from the final survey of that rancho as patented, does not seem to me to be entitled to much weight. The courts of the United States have determined that the Sespe was a grant for quantity within larger exterior limits, and it must therefore be presumed that at the date of the sale of the ex-mission the *surplus* land inside the Sespe exterior boundaries, after the segregation of the area granted, was understood to be and recognized as a part of the Government lands; and if, therefore, it was included within the Mission limits, as in this case, it would, in my opinion, pass under the general description of lands which at the date of the grant of the ex-mission had not been granted by the Mexican government, and were then recognized as a part of the Mission establishment."

I am unable to agree with you on this point. The decree of confirmation for the San Buena Ventura claim was for eleven square leagues within exterior boundaries, the particular description being as follows, viz:

"Situating in the county of Santa Barbara, and known as the Mission of San Buena Ventura, and which were known as belonging to the Mission, including the Laguna, Bueneme, et Palo Alto, los de Siembras de Santa Paula, la Canada de la Mission, and all those lands which at the date of the grant in this case *had not been granted by the Mexican government, and were then recognized as lands of the Mission establishment*, excepting the orchards, vineyards, churches, and buildings belonging to the said Mission at the date of the grant, to the extent of eleven leagues within said boundaries, and no more."

In my opinion, this decree confirmed only such lands not before granted as were *known and recognized* at the date of the grant as the *lands of the ex-mission*. The lands confirmed were "*known as the Mission of San Buena Ventura*," "*known as belonging to the Mission*," "*and those which had not been granted and were then recognized as lands of the Mission establishment*." The repeated use of these expressions could have been for no other purpose than to limit the grant to those lands not before granted, that by reputation and notoriety were the lands of the old Mission. The land lying to the east of the Arroyo Mupu was not so recognized and known, either in law or otherwise, and had been theretofore granted.

leagues of land as surveyed and approved by the United States surveyor general for California, under date of April (19, 1864) nineteen, eighteen hundred and sixty-four, excepting therefrom certain lands reserved in a conveyance of the rancho Larga by one Moraga to Levi Parsons, in December, 1864."

Relative to the foregoing, this Office held by decision of August 9, 1872, that the said agreement bound the owners of Canada Larga, and was equivalent to a selection by them, and that the survey of that rancho, as described in said agreement, must stand as the final survey of the rancho. From that decision appeal was taken, and on the 17th of December, 1872, the honorable Secretary of the Interior, by letter of that date, affirmed the decision dated August 9, 1872, of this Office, whereupon the surveyor-general, being advised, made the proper return, and a patent issued on the 26th of March, 1873, in accordance with said survey. It is clear to this Office that the agreement aforesaid was as binding upon the owners of the ex-mission as upon the owners of Canada Larga; and it is, therefore, held that whatever change may be made in the present survey of the ex-mission, the owners of the said lands must include as a part of their selection that certain tract, an interest in which they have contracted to convey to the owners of Canada Larga y Verde.

In accordance with the foregoing fact and the conclusions drawn therefrom, the survey now before me of the lands of the ex-mission of San Buena Ventura is hereby rejected by this Office, and a new survey of said lands will be made, as follows:

1st. The survey shall include all that part of the tract known as Laguna which is not included within the confirmed limits of any grant from the Spanish or Mexican governments.

2d. The remainder of the eleven square leagues to which the claimants are entitled must be selected in one tract and in compact form, so as to include the tract of land described in the agreement before mentioned as bounded on the north by a line running east from the east line of the rancho Santa Ana along the top of the Azufre mountains; south by a line due east from the southeast corner of Santa Ana rancho; west by the eastern line of said rancho, and east by a due north and south line, so as to embrace within said boundaries, as more particularly described in the quotation from said agreement above given, the quantity of one and one-half leagues of land: *Provided*, That if any of the land within these boundaries shall be found to include lands heretofore patented to the rancho Canada Larga y Verde, the land so included shall be excluded from the survey of the ex-mission San Buena Ventura hereby ordered: *And provided further*, That the selection of the eleven square leagues, as aforesaid, shall not be made so as to include any land embraced in the approved survey of any private land claim which has been patented by the United States.

You will give notice of this decision to all parties in interest, and allow sixty days from the service thereof for appeal to the honorable Secretary of the Interior, at the expiration of which time, if appeal be taken, you will make the usual return, but if no appeal be taken you will proceed to execute said decision.

In the meantime, please acknowledge the receipt of this communication.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 18th, 1874.

SIR:—I have considered the appeal from the decision by your office in the matter of the contested survey of the lands of the ex-mission of San Buena Ventura, Santa Barbara county, Cal., finally confirmed by the Supreme Court to Manuel Antonia Rodriguez de Poli, at the December term, 1868.

The decision of your Office correctly recites the facts, and, in my opinion, properly applies the law of the case thereto with one exception.

One of the objections urged before your office to the survey in question was its extension in an easterly direction beyond the Canada of the Arroyo Mupu, it being claimed that said Arroyo was the exterior western boundary of the rancho Sespe, an earlier grant, and that as the confirmation of the San Buena Ventura excepted all lands that at the date of that grant had been granted to other parties by the Mexican government, the lands in question were improperly included in the survey.

With reference to this point you say: "The objection to the survey because it extends east of the Mupu creek, over lands within the exterior boundaries of the grant to the rancho Sespe, but since excluded from the final survey of that rancho as patented, does not seem to me to be entitled to much weight. The courts of the United States have determined that the Sespe was a grant for quantity within larger exterior limits, and it must therefore be presumed that at the date of the sale of the ex-mission the *surplus* land inside the Sespe exterior boundaries, after the segregation of the area granted, was understood to be and recognized as a part of the Government lands; and if, therefore, it was included within the Mission limits, as in this case, it would, in my opinion, pass under the general description of lands which at the date of the grant of the ex-mission had not been granted by the Mexican government, and were then recognized as a part of the Mission establishment."

I am unable to agree with you on this point. The decree of confirmation for the San Buena Ventura claim was for eleven square leagues within exterior boundaries, the particular description being as follows, viz:

"Situated in the county of Santa Barbara, and known as the Mission of San Buena Ventura, and which were known as belonging to the Mission, including the Laguna, Bueneme, et Palo Alto, los de Siembras de Santa Paula, la Canada de la Mission, and all those lands which at the date of the grant in this case *had not been granted by the Mexican government, and were then recognized as lands of the Mission establishment*, excepting the orchards, vineyards, churches, and buildings belonging to the said Mission at the date of the grant, to the extent of eleven leagues within said boundaries, and no more."

In my opinion, this decree confirmed only such lands not before granted as were *known and recognized* at the date of the grant as the *lands of the ex-mission*. The lands confirmed were "*known as the Mission of San Buena Ventura*," "*known as belonging to the Mission*," "*and those which had not been granted and were then recognized as lands of the Mission establishment*." The repeated use of these expressions could have been for no other purpose than to limit the grant to those lands not before granted, that by reputation and notoriety were the lands of the old Mission. The land lying to the east of the Arroyo Mupu was not so recognized and known, either in law or otherwise, and had been theretofore granted.

The files of your Office satisfactorily show that the Sespe rancho extended westwardly to this arroyo, and embraced the land in question. The Mexican laws at that date and our laws afterwards recognized this boundary of Sespe, and the land in question could undoubtedly at any time after confirmation have been included in a selection by the owners of that grant in satisfaction of their claim. The Sespe was not a *sobrante*, but a grant for quantity within exterior boundaries, the western of which was the Arroyo Mupu. Until a valid selection had been made of the quantity confirmed, the land in question was by Mexican law and our law within the limits of the *Sespe grant*, and in addition thereto, and for that reason, could not within any meaning of the words, at the date of San Buena Ventura grant, have been "known and recognized" as lands of the ex-mission.

In my opinion the survey of the San Buena Ventura claim should not embrace any lands to the east of the Arroyo Mupu, and included in the original exterior boundaries of Sespe, and I so decide.

I modify the decision of your Office in this respect, affirm it in all others, and return herewith the papers transmitted with your letter of February 12, 1874.

Very respectfully,

C. DELANO, *Secretary*.

No. 497.

RANCHO LAS ANIMAS.

The United States district court in California had jurisdiction under the act March 3, 1851, (9 Stats., p. 631,) to settle surveys of private land claims in that State in all cases where that court had made the final decree on title; that surveys thus returned into court required no special form of approval by the United States Surveyor-General.

2. What was a sufficient approval considered.
3. Jurisdiction over such a survey having been acquired by the court under the act of 1851, continued until the final determination of the case, there being no subsequent legislation divesting the court of such jurisdiction.
4. Surveys ordered by the United States district court for California, prior to the act of July 1, 1864, (13 Stat., p. 332,) are not within the jurisdiction of the General Land-Office, though such surveys may have been approved by the court subsequent to the date of said act.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., Oct. 3, 1873.

J. R. HARDENBERGH, Esq., *U. S. Surveyor General, San Francisco, Cal.*

SIR:—In the matter of the rancho Las Animas, it appears that it was duly confirmed by decree of the United States district court, and a survey thereof made by United States deputy surveyor Wallace, in April and May, 1858, which said survey was filed Nov. 23, 1859, by surveyor-general Mandeville, in the United States district court for the southern district of California, and rejected, and a new survey ordered by decree of said court, filed Jan. 26, 1864. It also appears that the resurvey thus ordered was made and returned into court, where it was approved on the 10th day of June, 1865, and that a patent in accordance with such approved survey has been signed and recorded, and that the delivery of said patent to the parties in interest is objected to by E. L. Goold, attorney for claimants of rancho Salis, on the ground that the

survey of the Las Animas returned into court in 1859 had never been approved by the surveyor-general, and hence was not such a survey made prior to June 14, 1860, as was placed within the jurisdiction of the courts by the 6th section of the act of Congress approved on that date. (12 Stat., p. 33.)

Since the decision of the Supreme Court of the United States in Fos-sat's case, (21 Howard, 445,) wherein it was held that the jurisdiction of the court extended not merely to the determination of the authenticity and genuineness of the grant, but also to questions relating to its boundary, and that for the settlement of questions of location and boundary the power of the court did not cease until the issue of a patent in accordance with its decree, it has never been successfully disputed in that tribunal, but that under the act of March 3, 1851, (9 Stat., 631,) the court had jurisdiction to hear and determine matters relative to the survey of private land claims in which the district court had made a final decree on title. And in cases taken into court on survey under that act, it seems to have been the duty of the surveyor-general "*to cause*" the claim when finally confirmed to be accurately surveyed, and to furnish a plat of the same; but it does not appear that under said act in such cases the approval of the surveyor-general in any special manner, such as attaching to the map his certificate of approval, or any approval whatever, was necessary; yet an approval and a certificate of some kind was required by the 13th section of said act in all cases sent to the Commissioner of the General Land-Office for patent, and on all plats of surveys sent to this Office for examination, approval, and patent, there is attached a certificate, signed by the surveyor-general, to the effect that the field-notes from which the plat was made had been examined and approved.

In this case the plat filed in the United States district court, in 1859, is entitled "Map of the Rancho of Las Animas, Santa Clara county, confirmed to the heirs of José Maria Sanchez, surveyed by J. Wallace, U. S. deputy surveyor, April and May, 1858, containing 24,066.24 acres;" and attached to said plat is the following certificate: "I certify this to be a *full, true and correct* copy of the original on file in this office.

"Given under my hand and seal of office, at the city of San Francisco, this 21st day of November, 1859.

"J. W. MANDEVILLE,

"U. S. Surveyor-General, California."

Nothing has been alleged or proven tending in any way to show that the action of the U. S. deputy surveyor was not strictly in accordance with instructions from the surveyor general, or that the return of the surveyor general to the court was not regularly made, except his failure to approve the survey; and those acts, not thus shown to have been erroneous, must therefore be presumed to have been done legally and in the ordinary manner; so that, as the case now stands, we find the surveyor general, in response to an order of court, returned into court a copy of the survey of the rancho Las Animas, which survey, made under his instructions by a U. S. deputy surveyor, was then on file in the office of the U. S. surveyor general for California. That under these circumstances the return of the surveyor general was all the approval required of that officer, under the act of March 3, 1851, or any subsequent act for the adjustment of private land claims in California;

and that under said act of 1851, and the proceedings had in this case, that the U. S. district court for the southern district of California properly took jurisdiction of the said survey of the rancho Las Animas, I entertain no doubts. That the court treated that survey as official is shown by its decree of 1864, in which it "ordered, adjudged and decreed that the *official* survey of said rancho be set aside," etc.; and by its decree of June 10, 1865, in which it is stated that "this cause came on to be heard upon exceptions to the *official* survey of the land confirmed herein, which survey is shown by the certified copy of plat filed November 23, 1859," etc.

Jurisdiction over the survey aforesaid having been acquired by the court, under the act of 1851, it is manifest that that jurisdiction continued until the final determination of the case, unless it can be shown that by some subsequent legislation further proceedings in court had been prohibited. I am unable to find any such legislation, certainly not in the act of June 14, 1860, (12 Stat., p. 33,) relied upon by counsel for the Salis rancho. By that act all surveys made and approved after its passage were directed to be published, when, if no objections were filed within the time specified in the act, they became final by publication; but if objections were filed in the manner pointed out in said act, they might be taken into court and there adjusted; and by the 6th section of said act it was enacted that "all surveys and locations *heretofore* made and approved by the surveyor-general of California, which had been returned into the said district courts or either of them, or in which proceedings are now pending for the purpose of contesting or reforming the same, are hereby made subject to the provisions of this act; except in the cases so returned or pending, no publication shall be necessary on the part of the surveyor-general." If, therefore, an approval by the surveyor-general was necessary under the act of 1851, and I am correct in deciding that the action of the surveyor-general in this matter was an approval, then the 6th section of the act of 1860 expressly provides for the continuance in court of this class of cases, subject to the other provisions of the act.

The only remaining act by which Congress has regulated the jurisdiction over private land claims in California is the act of July 1, 1864. (13 Stat., 332.) The 1st section of that act provided for claims surveyed after the passage of the act, and that they should be under the jurisdiction of the Commissioner of the General Land-Office; and by the 2d section it is enacted that the provisions of the 1st section shall apply to all surveys and plats previously made by the surveyor-general which had not already been approved by the United States district courts for California, or by the Commissioner of the General Land-Office: "*Provided*, That where proceedings for the correction or confirmation of a survey are pending on the passage of this act in one of the said district courts, it shall be lawful for such district court to proceed and complete its examination and determination of the matter;" thus expressly providing for the examination in court of claims such as Las Animas, over which the said court then had jurisdiction.

The honorable Secretary of the Interior has decided by letter, dated July 3, 1872, addressed to this Office, that under the said act of July 1, 1864, those surveys ordered by court prior to the act of 1864, though approved subsequent to said act, are not within the jurisdiction of the Commissioner of the General Land-Office, but were within the jurisdiction of the court making the decree; and as in this case the survey

finally approved was ordered in January, 1864, I am clearly of the opinion, from the facts and for the reasons before stated, that the survey of the rancho Las Animas was regularly in court and properly approved by court, and being thus approved, the duty of this Office in the preparation of a patent therefor was purely ministerial and has been properly performed.

You will give notice of this decision to the parties in interest, and allow sixty days from the service thereof for appeal to the honorable Secretary of the Interior. If no appeal be taken you will deliver the patent in this case to the party or parties entitled thereto, but if appeal be taken you will make the usual return.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., June 29, 1874.

SIR:—I have examined the matter of the survey of the private land claim, "Las Animas," on appeal from your decision of the 3d of Oct., 1873.

I affirm your decision, and herewith return the papers transmitted with your letter of the 3d of Feb. last.

Very respectfully,

C. DELANO, *Secretary*,

To the Commissioner of the General Land-Office.

No. 498.

RANCHO ALISAL.

Held, that a survey of a private land claim in California, made under the act of March 3, 1851, (Stat., vol. 9, page 631,) and approved by the United States surveyor general for California, prior to the act of June 14, 1860, (12 Stat., page 33,) could not be legally published under said act, but must be published under the provisions of the act of July 1, 1864, (13 Stat., page 332.)

Decision of the General Land Office, affirmed by the Secretary, October 8, 1873.

No. 499.

RANCHO CUYAMACA.

Where a private land-claim in California has been confirmed for quantity, its location under the act of 1864 must be made in compact form within the exterior boundaries described in the final decree on title, if such boundaries contain a larger number of acres than the quantity confirmed; but if the boundaries thus described contain a less quantity than the area confirmed, then the location must conform in all respects to such boundaries, and these boundaries may be described in express words in the final decree on title, or by reference in such decree to some document containing such description.

In the settlement of surveys of this character the General Land-Office cannot consider testimony which relates solely to the validity of

documents referred to for description in the final decree on title ; for, although that Office does investigate as to the validity of such documents on suggestion of fraud in the confirmation, and for the purpose of submitting the matter to the judiciary for such action as it may deem advisable, it has no jurisdiction to declare a document thus referred to invalid for the purposes for which the decree may have directed it to be used.

The natural objects called for as boundaries must govern in locating the claim, although the claimant's occupation by himself or his agents, and the general reputation as to boundary among the residents in the vicinity of such claim, may indicate an altogether different tract of land.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., November 25, 1878.

J. R. HARDENBERGH, Esq., UNITED STATES SURVEYOR-GENERAL, *San Francisco, Cal.*

SIR:—I have carefully examined the matter of the survey of the rancho Cuyamaca, Agustin Olvera, confirmer.

On the 5th of June, 1845, Agustin Olvera petitioned the Mexican governor of California for a tract of land "known by the name of Cuyamaca." On the 10th of the same month and year the petition was forwarded to the alcalde of San Diego and to Joaquin Ortega, grantee of rancho Santa Isabel, in order that the alcalde might report, and that Ortega, as *colindante*, might "state what he knows concerning the subject." On the 18th of June, 1845, Ortega reported that the tract known as Cuyamaca "is bounded by (*colindante con*) Santa Isabel, and extends as far as Milquatay and part of the valley of Viejas" and was vacant ; and, on the 31st of the same month and year, José R. Arguello, the alcalde, also reported that said tract was vacant. On the 11th of August, 1845, the grant was made with no other description than that it was the place called Cuyamaca. On the 8th of May, 1846, the papers in the case were referred to the departmental assembly, where the said grant "of the tract known as Sierra de Cuyamaca" was approved June 6, 1846, to the extent "set down in condition third of the title granted under date August 11, 1845," which condition is that "the judge who may give the possession shall cause it to be measured according to ordinance, taking care at the time of giving the possession the *diseño* of the same be drawn out and forwarded in the original to the government, with notice as to the number of square leagues it contains." No juridical possession was given in this case ; and it appears by the certificate, dated April 1, 1846, of the first alcalde, J. A. Estudillo, that it could not be given for the reason that the rains had been so continuous in the mountains as to make that region of country almost impassable ; "however," continues the alcalde in this certificate, "I know as well by personal knowledge, as from the best information I have acquired, that the said place of Cuyamaca is as shown by the map as made, its extent being eight square leagues." When this map was filed does not appear by the original papers in this case, but by the above certificate of Estudillo it appears to have been made prior to April 1, 1846, or more than two months before the approval of the grant by the departmental assembly. It also appears by the certificate of José M. Morena, secretary *pro tem.*, under the Mexican government of Califor-

nia, that, on the 9th of June, 1846, or three days after the approval by the departmental assembly, he furnished from his records a copy of said *diseño*.

Agustin Olvera petitioned the board of land commissioners for California for the confirmation of the title to his claim on the 6th of October, 1852; and on the 4th day of April, 1854, the board rejected the claim, on the ground that the grant was void for uncertainty of description. From this decision appeal was taken to the United States district court for the southern district of California; the deposition of José Ortega filed; the claim rejected; a motion for a new trial made and granted, and the depositions of J. J. Warner, and José Antonio Carrillo filed: whereupon the court, on the 17th day of March, 1858, rendered a decree confirming the claim, from which decree appeal was taken by the Government to the Supreme Court of the United States; but this appeal, not having been prosecuted, was docketed and dismissed by the said Supreme Court at its December term, 1858. A mandate reciting this action was filed in the district court, August 13, 1869, and a final order made by the said district court, allowing the parties to proceed upon its decree of March 17, 1858, as upon a final decree.

A survey of this rancho was made by United States Deputy Surveyor James Pascoe, in June, 1870, published in October and November, 1870, pursuant to the provisions of the act of July 1, 1864; and objected to by certain miners and settlers within the limits of said survey, who allege that it should not extend further north than the most northerly boundary of the three peaks represented on the southwest boundary of the plat of said official survey, forwarded to this office with the other papers in the case, without the approval of the United States surveyor-general for California, with your letter of April 20, 1871. Subsequently an application was made by the claimants for a rehearing before you, which application was supported by affidavits; and, under date of the 21st of August, 1872, you were directed to re-open the case and take further testimony. The testimony thus taken and accompanying papers were received with your letter of the 20th of June, 1873.

Where, as in this case, a private land-claim in California has been confirmed for quantity, it is well settled that its location must be made in compact form within the exterior boundaries described in the final decree on title, if such boundaries contain a larger number of acres than the quantity confirmed; and, if the boundaries thus described contain a less quantity than the area confirmed, the location must conform in all respects to such boundaries. (1 Wall., 439; 2 Wall., 444, and 2 Wall., 649.) Hence the first question to be answered in adjusting surveys of this character is: What description of the boundaries of the land is contained in the final decree on title, either in express words, or, in the absence of express words, by reference to some document containing such description? (See as to references, 2 Black., 499. 4 Wheaton, 445. 3 Sumner, U. S. C. C., 180. 13 Mass., 149; and 1 Wall., 439.)

In this case the final decree contains no express words descriptive of boundary, but refers for description to certain parts of the record upon which such decree was founded. One part of this decree is as follows: "The land of which confirmation is hereby made is situated in the county of San Diego, State of California, called Cuyamaca, containing eight (8) square leagues of land, and no more, within the boundaries described in the grant and map of said land, and the certificate of José Antonio Estudillo, first justice of the peace, dated April 1, 1846, con-

tained in the transcript and the testimony on file in this case." This, it is alleged by claimants, is a reference for description to the *grant*, the *map*, the *certificate* of Estudillo, and the *testimony filed in the case*; but, on the part of the contestants, it is claimed that the words, "*contained in the transcript and the testimony in the case*," as above quoted, refer to certain documents in the record, to wit, the grant, map and certificate, which were thus "contained in the said transcript and testimony," and hence that only the grant, map and certificate can be considered by this office in locating the Cuyamaca rancho in accordance with the final decree on title. The construction put upon this part of the decree by the contestants, however, is manifestly incorrect; for it must be presumed that the court used the word "testimony" in its legal and well understood signification of the "declaration of witnesses," as distinguished from documentary evidence; and it is certainly not possible that evidence of the class last named, such as the grant, map and certificate, could be *contained* in the "declaration of witnesses," although they might have been, and, as the record in the Cuyamaca shows, actually were, contained in the "transcript" of the evidence taken before the board of land-commissioners, and filed under section twelve of the act of August 13, 1852, (10 Stat., 99,) in the above-named district court. I am, therefore, clearly of the opinion that this portion of the decree refers for description to the grant, map, certificate of Estudillo, and the testimony filed in the case prior to the final decree on title.

The only remaining part of this decree which in any way describes the boundaries of Cuyamaca, is a proviso immediately following that portion of the decree above set forth, to wit: "*Provided*, That the land of which confirmation is hereby made is of the extent of eight square leagues of land and no more, within the boundaries as laid down in said map and grant, if such quantity be therein contained, but, if there be less quantity, then confirmation is hereby made of such less quantity." That this proviso, if standing alone, would limit the description to the grant and map only, will not be disputed. But, construing the different parts of the decree together, to give the proviso this construction would necessitate the elimination from the body of the decree of, 1st, the certificate, which was the only original document before the court giving the area of the grant; and, 2d, the testimony, a part of which was taken after the claim had been twice rejected, and which, therefore, may properly be presumed to have been of importance in enabling the court to identify the boundaries and confirm the title of the tract granted. A better construction, and one which will give effect to the whole decree, as well as carry out the intention of the court, which was evidently to give the best possible description of the land confirmed, is, in my opinion, to hold that all the evidence referred to for description in the decree should be considered by this office in establishing these boundaries; and I shall, therefore, take the description of such boundaries from the grant, the map, the certificate of Estudillo, and all the testimony filed in the case prior to the final decree on title, which said description, as therein contained, is as follows:

1. THE GRANT.

This document gives no particular description of the land granted, but mentions it generally as the place called Cuyamaca, in extent as shown by the map which was to be made, and the possession which was to be given.

2. THE MAP.

This document represents a tract of land of nearly square form, which, by the scale of varas attached, appears to be about three and one-half leagues from north to south, and about four leagues from east to west, and bounded on the north by the Sierra de Cuyamaca and by Iguai; on the south by "Portesuelo," "Sierra," and "Sierra pa la parto del Valle de las Viejas;" on the east by "Sierra de Jacupin;" and on the west by "Sierra." Through this tract, as thus represented, is a road running from "Iguai," on the north, to "Portesuelo" on the south. Near the north boundary, and west of this road, are the words "Pasas Coscar"—"Cañada;" immediately south of which is the word "Pischine;" and south of "Pischine" are hills and "Pilcha Cañada." Along the road a short distance south of Iguai, is represented a place called "Cuyamaca;" south of which, and about midway between Iguai and Portesuelo, is represented a place marked "Mitaragui." Following the road, and going south from Mitaragui, is represented the valley of Guatay, which, as represented, lies near the southern boundary of the tract, and about northeast from the Portesuelo above mentioned. Near the northern boundary of this tract, and east of the said road, is a place marked "Laguna que se Seca," southeast of which is represented the "Mesa de Huacupin," south of which mesa, and near the southeast corner of the tract, as shown by this diseño, is represented a rancheria named "Jamatayune," (or Samatagune.) It is stated in a note upon the margin of this diseño, that "within the limits of this sketch there are some pine and other timber, and some small water-courses not represented thereon."

3. THE CERTIFICATE OF ESTUDILLO.

This certificate sets forth "that the said place of Cuyamaca is as shown by the map which has been made, its extent being eight square leagues." It contains no other description of the tract.

4. TESTIMONY FILED IN THE CASE.

S. E. Arguello, in his deposition before the board, testified that Cuyamaca is about ten leagues east of San Diego, and that the places marked on the map (diseño) are well known, and that by such map the boundaries of Cuyamaca may be identified. J. J. Ortega, in his deposition, dated September, 1855, before the United States district court, testifies that the Cuyamaca is bounded on the north by Sierra Cuyamaca and Iguai; south by Portesuelo, opening into the valley of Viejas; east by Sierra de Jacupin; west by rancho Santa Isabel; and, on cross-examination, he further testifies that Guatay and Iguai were about five leagues apart, and that Iguai was south of and very near to the rancheria Cuyamaca, which he had heard the Indians say was east of and at the foot of the hill called Cuyamaca. José Antonio Carrillo, in his deposition of January, 1856, testifies that Cuyamaca is *near* the rancho Santa Isabel; and J. J. Warner, by deposition, dated December, 1856, testifies that the Cuyamaca is a tract near the summit of the mountain ridge which separates the waters flowing into the Pacific Ocean from the waters flowing into the Rio Colorado, and that "from the land of Santa Isabel on the northeast to the land of Valle Viejas I should judge to be about (10) ten miles. From the mountain of San Felipe on the northeast, in a southwesterly direction, about nine or ten miles, there is a prominent mountain well known as Cuyamaca, lying on the northeast border of this tract."

These several parts of the decree are of equal dignity; but, when examined together, the map will be found to be the part principally relied upon for description of boundary. It is twice expressly referred to for description in the decree on title, and of all evidence in the case this map contains the most minute description of the land granted. It is the map which, in the grant, was directed to be "drawn out and forwarded to the Government." It is referred to for description in the certificate of Estudillo, and this reference is, in fact, the only description of boundary contained in such certificate; so that thus far we find that one of the four parts referred to for description contains no mention of boundary; and that two others of the said four parts, one of which contains the most minute description of the tract granted, agree, or, in other words, the one relies upon the other for description. But one part referred to in the decree remains to be considered, namely, the testimony of the witnesses who, in their depositions in the case prior to the final decree on title, have described any of the boundaries of Cuyamaca. These witnesses are four in number. The first, Arguello, deposes that the Cuyamaca is surrounded by mountains; that the "map is sufficiently accurate to distinguish the tract in question," and that the names of the particular places appearing thereon are "well-known names of particular localities." This witness, in his deposition, gives no further description of the tract, and, therefore, agrees in his statements with the boundaries as exhibited on the said map to which he refers; for it will be observed by an inspection of the said *diseño*, that it is entirely surrounded by "sierra." The next witness, Ortega, so far as he gives any description of the natural objects on the north and south boundaries, describes them exactly as they are marked on the map; and he also mentions the place called "Guatay," shown by the map to be near the southern boundary of this rancho. But the east boundary this witness states to be "Sierra Jacum," while on the *diseño* the east boundary is the "Sierra Jacupin;" and the west boundary, as given by this witness, is the rancho Santa Isabel, while on the *diseño* the west boundary is marked "Sierra." This reference to Santa Isabel on the west is not, necessarily, a conflict with the boundaries as described in the document referred to; it is only a conflict when it appears that the Santa Isabel is north of the "Sierra Cuyamaca" and "Iguai," or south or east of the boundaries as given in said document; for the west boundary might be at once the rancho Santa Isabel, as described by the witness, and "Sierra," as shown on the *diseño* referred to, as above stated. But, if there be any conflict, I am clearly of the opinion that the boundaries on the *diseño* must govern: First, because the map, the certificate of Estudillo, and two of the four witnesses who describe the boundaries, one of which two is Ortega himself, agree as to the north and south boundaries; and, second, if any additional reason was necessary, the testimony of the two remaining witnesses, who testified subsequent to Ortega, do not agree with him as to the relative position of Santa Isabel rancho to Cuyamaca; one (Carrillo) testifying that he believes Cuyamaca was near Santa Isabel, and the other (Warner) using in his testimony an ambiguous expression which may mean either that Santa Isabel *adjoins* Cuyamaca on the *northeast*, or that it was in a *northwest direction* from Cuyamaca. The latter, however, seems to be the true meaning of the witness, for, as will be observed by referring to the testimony, he uses exactly the same vague expression to describe the mountains of San Felipe on the northwest, though he at

the same time states that there is a prominent mountain well known as Cuyamaca lying on the northeast *border* of this tract; so that if this Cuyamaca mountain is not within the tract described, but, as stated by the witness, is on its northeast border, it is evident that the San Felipe mountain, lying in the same direction, cannot adjoin the Cuyamaca rancho, but must be beyond the Cuyamaca mountains. There is but little more to be said concerning these witnesses. About the only statements made by them, which have not been examined, are the statement of Ortega that Iguai and Guatay were about five leagues apart, and the statement of Warner that from Santa Isabel rancho, as well as from the San Felipe mountains, to Viejas valley, is about nine or ten miles, and that Cuyamaca is near the summit of a mountain ridge which separates the waters flowing into the Pacific Ocean from those flowing into the river Colorado. These distances, however, cannot affect the boundaries of the rancho where the location of the natural objects themselves is known, nor can the mention of the summit of a mountain ridge *near* Cuyamaca ranch be taken to contradict the location of that ranch as shown by particularly described natural objects or places.

In this examination we have seen that, of the four parts of the final decree on title in this case, the *diseño* contains the most particular description of the land granted; and that the description thus contained is not amended nor contradicted by any of these parts of the said record except in the testimony, and then only by two of the four witnesses whose testimony is of record, and that, of those two, one agrees with the *diseño* in his description of the north and south boundaries of the tract, and the other mentions boundaries in so vague a manner that his description cannot be treated as of sufficient weight to change or in any manner affect the remainder of the record.

Having thus determined the natural objects which are to guide in this investigation, I now turn to the testimony filed in this case in support of and against the official survey of Cuyamaca, made by United States Deputy Surveyor James Pascoe, in June, 1870, and published in October and November of the same year, pursuant to the provisions of the act of July 1, 1864. And here it may be stated that in locating this rancho all evidence which relates solely to the validity of any documents referred to in the final decree in this case must be excluded from the consideration of this office. The court by its decree has adjudged that the documents thus referred to are valid; and, although this office does investigate as to the validity of such documents on suggestion of fraud in the confirmation, and for the purpose of submitting the matter to the judiciary for such action as it may deem advisable, neither this nor any other executive office has jurisdiction to set such judgment aside, nor in any manner to declare a document thus referred to invalid for the purpose for which the decree may have directed it to be used. The only evidence, therefore, which can be used by this office in this case, in determining the questions now before it relative to the survey under consideration, is that which tends to show the location on the earth's surface of the natural objects and places described, by reference, in the final decree of confirmation for the Cuyamaca rancho.

All the evidence in this case taken before the surveyor-general agrees as to the general locality in which the rancho Cuyamaca should be located; and the principal contest is, whether the northern boundary should extend so far north as to adjoin the rancho Santa Isabel on the

southeast; or whether the northern boundary of Cuyamaca shall be put further south, so as to exclude the Julian mines, which lie nearly due west from the southern boundary of the rancho Felipe, and three or four miles in a southeasterly direction from the southeastern boundary of the rancho Santa Isabel.

That part of this evidence, filed by contestants and consisting of topographical exhibits of Cuyamaca, substantially agrees with the topographical exhibits filed by claimants and with the plat of Pascoe's official survey, so far as the said exhibits and official plat purport to show the same tract of country. But it will be observed that while contestants' exhibits show the topography of the country as far south as the mountains bordering on the north of Viejas valley, the exhibit filed by the claimants and Pascoe's map go no further south than the first valley south of Cuyamaca valley, and which by the testimony of John Carl Eschrich and others appears to have been called respectively "Mataragui," "Valley Verde," (or "Green Valley,") "Lassiters," and, finally, "Mulkins' Valley." Of these topographical exhibits, that by Wheeler, and filed by claimants, seems by the testimony to have been made from actual surveys, from riding over the country, and from observations from Cuyamaca peak; and, of those filed by contestants, that by Fox seems by the testimony to have been made from field-notes of Pascoe's survey, from actual survey by Fox, and from sketches made by him. That by Herman seems to have been made partly from the survey of Fox, and partly from the surveys made by Herman for a railroad company; and that by Wheeler, marked "Contestants' Ex. G," is shown by the testimony to be a part of an official map of San Diego county, made by Wheeler while county surveyor of that county, and approved in August, 1872, by the supervisors thereof.

The location of Cuyamaca valley, and Mulkins' or Green valley, is shown by the official plat in this case. That this location is correct is shown by the testimony filed in this case; and, as before stated, the last-named appears to be identical with the place "Mataragui," shown on the diseño. Taking these points as established, the depositions relative to the location of the other places shown on the diseño will now be considered.

1. THE SOUTHERN BOUNDARY.

With respect to this boundary, Joseph Yancey testifies that Guatay is about twenty miles south of east from Julian mines, and is almost east from Viejas valley. Joseph Swycaffer testifies that Guatay is twenty-two to twenty-five miles east of south of Santa Isabel Rancho, and five miles south of Green valley; that the first rancho after leaving Guatay, going to San Diego, (south,) is "Valley de las Viejas," which is distant about six miles from Sandoval's house (at Guatay); that he has heard the name "Samatagune," but cannot locate it on the copy of Fox's map; that Guatay, as he knows it, is two valleys, about one mile apart; that the road from Valle Viejas to Guatay passes up a cañon to a place called Portesuelo, which is two miles from Guatay, and a very noticeable place, it being the outlet from both Viejas valley and Guatay. John Carl Eschrich testifies that he knows Guatay; that Sandoval lived there; that from Sandoval's house to Mataragui, or Green valley, where he formerly lived, is nearly five miles; that between Guatay and Viejas valleys is a place called Portesuelo; and that he has been several times to Samatagune, which is three or four miles

easterly from Guatay. J. S. Manasse testifies that from Las Viejas to Guatay is about eight miles; that Samatagune is a small valley where at one time he had one hundred head of cattle, and that he has known for about fourteen years the places marked Las Viejas rancho, Portesuelo, Guatay, Samatagune, and Green valley, on Contestants' Ex. B, No. 1, (copy of Fox's map.) John Carruth, in his deposition, describes a place east of Guatay as an Indian rancheria, but apparently does not know it by the name of Samatagune. He then testifies that from Milquatay to Guatay is about twenty miles, and to Green valley about twenty-five miles. M. G. Wheeler, in his deposition, testifies that from William Williams's house (in Viejas valley) to Guatay is about three and one-half miles; that he knows a rancheria two or three miles east of Guatay, but does not know whether or not it is called Samatagune; that Guatay is five miles south of Green valley, and that he believes Green valley is identical with Mataragui on the diseño. Agustin Olvera, in his examination-in-chief, describes some of these places, but as his testimony was given in the Spanish language, and as it does not appear in the record that the person who interpreted this part of his deposition was duly sworn, such testimony cannot be considered in this case. These witnesses were called by contestants; and as to this boundary, the following testimony by depositions was introduced by the claimants: John L. McIntire testifies that there is a creek by which the water runs from Green valley into Guatay valley. Martin Trimmer testifies that he lives in Guatay, nine miles from Mulkins' (Green valley), and the creek in Mulkins' valley runs north and south. John Forster testifies that he is acquainted with the place called Portesuelo, and with that Ortega calls Sierra Jacumb. W. P. Reynolds testifies that there are two valleys called Guatay, and that Mataragui is a narrow valley through which the road runs to Julian; that from the southern Cuyamaca peak he could see the outlines of Guatay valleys and the southern part of the Valle de las Viejas; that he had seen the Portesuelo marked on the Fox map; that from the junction of the streams in Little Guatay valley to Portesuelo is about five miles. J. J. Warner also testifies in this case; but, aside from his statement that he does not know of a place called Guatay, and the further statement that Valley Viejas is twenty-five miles from Santa Isabel rancho, or fifteen miles further than the distance between these places as testified to by him before the United States district court, his testimony as to the southern boundary may be passed over without further remark. These depositions, in my opinion, clearly establish the locality on the earth's surface of the "Portesuelo," and Guatay, and Samatagune valleys; and, as thus located, they are in the same relative positions to each other and to Viejas valley as they appear on the diseño and on the maps filed in this case as exhibits.

2. OF THE EASTERN BOUNDARY.

Concerning this boundary, Joseph Yancey, witness for contestants, testifies that he has been at "Mesa Huacupin," which lies between Green valley and Laguna Grande; that Laguna Grande is about nine miles southeast of Laguna Seca, or five or six miles east-northeast from Green valley, which is nearly five miles south of Laguna Seca by the road between Julian and Guatay; that he knows the place marked Sierra Jacupin on the diseño, and that this sierra is north-northwest from Laguna Grande. J. S. Manasse, witness for contestants, testifies

that he knows a mesa east and southeast from Green valley, which mesa is more than twice as large as Green valley, but he does not know whether or not this mesa is called "Huacupin." John Carruth, witness for contestants, testifies that he knows a mesa east of Cuyamaca valley and Laguna Seca, from which mesa can be seen, in an easterly direction, a mountain running north and south, called Agua Caliente (Jacupin); and that Jacumb Mountain is eighteen miles east of Milquatay. M. G. Wheeler, civil engineer, and witness for contestants, testifies that there is a mesa of considerable extent to the eastward of Green valley. C. J. Fox, civil engineer, and witness for contestants, testifies that from three to five miles east of Green valley is a mesa extending a considerable distance north and south; that east of the mesa is a valley, and beyond the valley a range of high rocky mountains, running northerly and southerly. W. P. Reynolds, civil engineer, and witness for claimants, testifies that he examined the Cuyamaca rancho from the summit of the most southerly of the three Cuyamaca peaks, which peak, as we shall see upon examining the western boundary, lies nearly west from Green valley; that to the southeast of this peak is a mesa, the north end of which is east of the centre of Green valley, and which extends south about one mile, and is about one-half mile wide, and is considerably elevated, being just below the summit of a mountain which has a steep slope to the southwest for about one-quarter of a mile, and then projects off in a mesa or table-land; that "with the exception of the Mesa Huacupin," Herman's map (Contestants' Ex. H) conventionally appears to represent eastwardly from the highest (southern) Cuyamaca peak, "broken ranges of mountains which are undoubtedly approximately correct in their location upon the map;" and that he uses mesa in the sense of a large flat-topped mountain, or gently-sloping land upon the side of a mountain. The evidence in this case also conclusively shows the existence of a road running from Portesuelo through Guatay and Green valley north of a laguna, which, as we shall see in examining the northern boundary, is the Laguna Seca of the diseño. This evidence, in my opinion, conclusively establishes the existence of a mesa and a sierra in the same relative positions from Portesuelo, Guatay, and Viejas valleys, Samatagune, the road and Laguna Seca, as the Mesa Huacupin and Sierra Jacupin as shown on the diseño, except that the mesa is located by the testimony somewhat further south than its location as indicated on the diseño. That, however, I do not consider a variance of any importance. It is sufficient that both the mesa and sierra are, as shown by the evidence, east of the road from Portesuelo north through Guatay; that the mesa is north of Samatagune, and south of east from Laguna Seca; that the mountains are east of the mesa; and that the evidence fails to show any other places, within the claimed limits of Cuyamaca, which will in any manner correspond with the above-named places as they are marked on the diseño.

3. OF THE WESTERN BOUNDARY.

We have seen that the southern and eastern boundaries, as shown by the diseño, are nearly at right angles with each other; and that the western boundary, as thus shown, is mountains parallel to the eastern boundary and west of the road running north from Portesuelo and Guatay. It also appears by the evidence in this case that to the westward of the road, as shown by the testimony and exhibits, are three mountain peaks lying north and south, the southernmost of which

peaks is nearly west from Green valley, and the northernmost north-west from Laguna Seca; so that these peaks are in a westerly direction from and nearly parallel to the line formed by the mountain and mesa on the east, which I have already indicated as the eastern exterior boundary of the Cuyamaca rancho. From these peaks south to the mountain which is part of the boundary of Valle de las Viejas rancho on the north, the country is shown to be rough and mountainous. We have, therefore, a continuous range of mountains, or mountainous land, from a point on the north, northwest of Laguna Seca, to a point on the south in a mountain forming the north boundary of Viejas Valley. It also appears that this mountain on the south is at about the same distance south as the places established as Portesuelo and Guatay, and west of both these places and the road passing them before described. Still another coincidence between this line and the western boundary as shown on the diseño will be mentioned in examining the northern boundary.

4. OF THE BOUNDARY OF CUYAMACA ON THE NORTH.

The depositions of witnesses as to the natural objects and places on or near this boundary are substantially as follows: Joseph Yancey, witness for contestants, testifies that Laguna Seca is eight miles from the southern line of Santa Isabel rancho, and between one and two miles south of Iguai, a place formerly occupied by Indians; that Laguna Seca is in Cuyamaca valley; that Iguai is, by the road, about six miles south of Julian City, and in the northwest corner of Cuyamaca valley; that he knows of no other place called Iguai, and that the location of the rancheria Cuyamaca was marked by him with a letter "C" on Contestants' Exhibit B, No. 1, (a short distance northerly of the northern terminus of course No. 11 on Pascoe's official plat.) Joseph Swycaffer, witness for contestants, testifies that Cuyamaca valley is eight miles north of where Mulkins lives in Green valley; that Iguai, Cuyamaca valley, and Laguna Seca are correctly laid down on Contestants' Exhibit B No. 1, (copy of Fox's map,) and that Iguai is usually occupied by Indians during "acorn time." John C. Eschrich, witness for contestants, testifies that Laguna Seca is about four miles north of Mataragui, (Green valley;) that Iguai is about one and one-half miles northwest from Laguna Seca, and about nine or ten miles south of Volcan mountains; that Vallecitos is southeast from Iguai, and that there are no mountains northeast of Cuyamaca valley called Cuyamaca mountains. John Carruth, witness for contestants, testifies that Cuyamaca valley and Laguna Seca are west of a mesa; and that Volcan mountains are about north-northeast from northern Cuyamaca peak. C. J. Fox, witness for contestants, testifies that Cuyamaca valley is bounded on the north by a range of hills running easterly from the middle Cuyamaca peak and forming a continuation thereof; that he considers the words "Sierra," "Sierra," "Sierra de Cuyamaca," are intended to refer to a continuous range of mountains; and that Laguna Seca is situated almost east of the middle Cuyamaca peak. J. J. Warner, witness for claimants, testifies that the place marked Cuyamaca on the diseño was on the southern border of a small irregular valley, lying mostly to the north and northwest of said Cuyamaca. John L. McIntire, witness for claimants, testifies that he knows Laguna Seca as shown on Pascoe's map; that from Julian City to Cuyamaca valley is about five miles; that the main road passes about

one and one-half miles east of the northern Cuyamaca peak ; that, ascending from Laguna Seca, the summit of the mountain range, aside from the Cuyamaca peaks, is about three miles north of Cuyamaca valley, and the principal Indian rancheria on Pascoe's map is in the northwest corner thereof, and is called "Hahsah." Martin Trimmer, a witness for claimants, testifies that he recognizes on Pascoe's map Mulkins' Valley, Large Valley, and also Laguna Seca, which is upon the Cuyamaca mountain. W. P. Reynolds, witness for claimants, testifies that from the summit of the most northerly Cuyamaca peak the mountain slopes down about east near the northern end of Cuyamaca valley ; that "along the north end of the same valley lower spurs of the Volcan and Santa Isabel range, between the head of the valley and the desert, run in a general direction about S. 35° E., and N. W. Following the first course, along the edge of the desert, for about four or five miles, it terminates in a peak considerably elevated above the balance of the range;" that the country east of Cuyamaca to that peak is rocky spurs of mountains, and that the map of Wheeler (Claimants' Ex. C C) appears to give a very good description of the country around Cuyamaca. The map here referred to by witness shows the main road from Guatay north, and another road west of the main road and northwest of the summit of the northern Cuyamaca peak. This western road passes the place marked on Fox's map "Iguai." Wheeler's map, above referred to, further shows a cañada running east from Laguna Seca, which cañada is marked on Fox's map "Cañada Cuscar." This cañada is also shown on Pascoe's official plat ; but the western road, above described, is not represented thereon, though west of the locality of said western road on Wheeler's map is marked on Pascoe's official plat a trail leading to an Indian rancheria. There are thus identified by the above evidence the following places, situated in the same relative position as shown on the diseño: Iguai, Laguna Seca, Cuyamaca rancheria, and a cañada, or all the places shown on the diseño except the Cuyamaca mountains ; and if this line be adopted as the northern boundary, it will have Sierra Cuyamaca for a boundary on the northwest, and the remainder of said boundary the evidence shows to be in part rough spurs of mountains and in part a continuation easterly of Sierra Cuyamaca, thus giving some additional weight to the opinion of one of the civil engineers whose testimony is referred to above, that the words "Sierra," "Sierra," "Sierra de Cuyamaca" on the diseño were intended to represent a continuous range of mountains.

The above depositions, as to the location of the north, south, east, and west boundaries, contain certain general statements to the effect that several parties occupied north of the Cuyamaca mountains under permission from Olvera, to whom the Cuyamaca ranch was granted by the Mexican authorities ; and certain other general statements in effect that by common reputation the boundaries of Cuyamaca adjoin the Santa Isabel rancho on the southeast. But, though I have examined these statements, I have not deemed them of sufficient importance to be referred to at length, for the natural objects and places called for as boundaries are, in my opinion, proven, and must govern in locating the rancho, notwithstanding the claimant's occupation by himself or his agents, and the general reputation among the inhabitants in the vicinity of said rancho as to its boundaries, may indicate an altogether different tract of land. Nor have I deemed it necessary to refer at length to the numerous affidavits filed in this case, though I have examined them with

care, and find that they corroborate the location of the places described in the other evidence and represented on the diseño.

It is but seldom that there is so marked a coincidence between the relative positions of the places marked on the diseño of a Mexican grant, and the location of those places on the earth's surface by witnesses, as in this case. Every prominent place on the diseño has been identified on the ground, and, as thus identified, it is evident that Pascoe's official survey of the Cuyamaca includes a large body of land not included in the grant to Agustin Olvera. Pascoe's survey is, therefore, hereby rejected by this Office, and a new survey will be made within the following lines, as established by the evidence aforesaid: On the north, a line starting from the northern portion of the northern Cuyamaca peak, and running easterly along said mountain and the mountain spurs to the east thereof, and north of Iguai and Cuyamaca valley, to a point north of the mountains which on the east boundary lie immediately east of the mesa to the east of Green valley; thence southerly along the said mountain immediately east of the mesa aforesaid, to a point east of Samatagune; thence westerly along the hills south of Samatagune, Guatay valley, and Portesuelo, to a mountain which lies west of the road from Valle de las Viejas to Guatay and northwest of the said Viejas valley; thence northerly along the hills and Cuyamaca peaks to the northern line of the northern boundary, as herein directed to be run. And as the cañada Cuscar is represented on the diseño as within the limits of Cuyamaca, this western line should run along the western slope of the said Cuyamaca peaks, so that the said cañada may be included within the exterior boundaries from which selection can be made.

You will give notice of this decision to all parties in interest, and allow sixty days from such notice within which to take appeal to the honorable Secretary of the Interior. At the expiration of that time you will make the usual return.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

Affirmed by the Acting Secretary, B. R. Cowen, July 15, 1874.

No. 500.

RANCHO SAN MIGUELITO.

Held—That the Department has no power under the act of July 1, 1864, (13 Stat., page 332,) to approve a survey of a private land claim in California any part of which survey is clearly outside the limits of the grant and confirmation, unless said part contains so small an area that it may be ignored in the approval, for the sake of convenience. Held, also, that a survey of such a claim containing several hundred acres clearly outside of the limits of the confirmation upon which such survey was based could not be approved.

Decision dated March 17, 1874, by Secretary of the Interior.

No. 501.

RANCHO CASLAMAYOMI.

Where the final decree of confirmation under the act of March 3, 1851, confirmed the title to a tract of land containing "eight square leagues

of land, a little more or less, as shown by the map or diseño in the expediente, and in the boundaries described in the titulo," and the diseño shows a larger tract of land than any other part of the expediente: Held, that this was a confirmation according to the boundaries laid down in the titulo. Held, also, that where the western boundary of a grant was "mountains covered with redwoods," the foot of such mountains on the east was meant.

Decision of the Commissioner affirmed July 13, 1874, by the Acting Secretary of the Interior.

No. 502.

RANCHO LOS PRIETOS Y NAJALAYEGUA.

Held—1. That a survey of the Los Prietos y Najalayegua might have been made under 8th section, act of July 23, 1866, if the claimants had failed to request a survey and to make a sufficient deposit of money to pay for the same within ten months of the date of said act; but the claimants, within ten months of the approval of said act, having requested and paid for a survey, such request and deposit was a bar to any subsequent proceedings relative to the survey of this grant under 8th section, act of July 23, 1866, notwithstanding the claimants had subsequently failed to again request and again deposit.

2. That though the act of June 12, 1866, confirming the claim, directs it to be surveyed by the surveyor general, and its approval by the Commissioner of the General Land-Office before patent, and though there be no official survey before said Commissioner, yet that officer will nevertheless indicate to the surveyor general the boundaries of the claim, and the principles upon which such boundaries are determined, if a contrary course would tend to delay the final adjustment of such claim.
3. That it is a well-established principle of law that a public officer can bind the government he represents only by acts which come within a just exercise of his official powers, and though the Supreme Court of the United States has held with respect to Spanish grants in Louisiana and Florida, and grants in California, made prior to the colonization law of 1824, that the public acts of public officers purporting to be exercised in an official capacity, and by public authority, shall not be presumed to be usurped, but a legitimate authority previously given or subsequently ratified, yet it is well settled that under the Mexican colonization law of 1824, and regulations of 1828, the Mexican Governor in California could not grant, nor the Departmental Assembly approve, a grant to any one person for more than eleven square leagues.
4. That legislative grants must, if practicable, be interpreted so as to effect the intention of the grantor, but where the words of the grant are ambiguous, the construction must be most strongly against the grantee, and hence, that if such be the intention of Congress, a confirmation may make valid a void thing, and is as fully to all intents and purposes a grant, as if, instead of the word "confirmed," technical words of grant had been used; but with respect to a confirmation of a Mexican colonization grant in California, pursuant to the provisions of the act of March 3, 1851, such confirmation established nothing but the validity of the claim as it existed at the date of the treaty of Guadalupe Hidalgo.
5. That the act of June 12, 1866, was not a new grant, but a validation of the pre-existing, equitable Mexican colonization title, specially referred to in the said act, and as such a grant could not exceed eleven square leagues, no more than that quantity was confirmed by the said act of 1866.
6. That when the law commands a thing to be done, it impliedly authorizes the performance of whatever may be necessary for executing its commands; and hence, under an act directing a survey to be made and its approval by the Commissioner of the General Land-Office, the Commissioner will examine testimony as to the boundaries of the grant shown by the title papers, if necessary to a correct location of such boundaries.

7. Where one of the calls for boundary of a grant is a mountain represented on a *diseño*, the foot of such mountain is the true boundary.
8. Where one of the calls for boundary of a grant cannot be located on the earth's surface without excluding other calls for boundary contained in the same grant, the land-office will retain and locate the grant in accordance with the calls for boundary which best satisfy the grant and confirmation.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., Sept. 18, 1874.

JAMES T. STRATTON, Esq., *U. S. Surveyor-General, San Francisco, Cal.:*

SIR:—This Office has carefully considered the matter of the rancho Los Prietos y Najalayegua, confirmed to José Dominguez by the act of Congress approved June 12, 1866, (14 Stats., page 589,) and surveyed under the act of July 23, 1866, (14 Stats., page 220.)

If Dominguez or his grantees had failed to perform the acts set forth in the eighth section of the act of July 23, 1866, the non-performance of which brought claims of a given class within the provisions of that section, it is evident that a survey in conformity with those provisions might have been made of this rancho, for at the passage of the act of July 23, 1866, the Los Prietos y Najalayegua was a finally confirmed California private land claim derived from Mexican authority, and the provisions of the said act of 1866 authorize a survey in case of the non-performance of the acts specified in the eighth section, in "*all cases* where a claim to land, by virtue of a right or title derived from the Spanish or Mexican authorities" had been "*finally confirmed*." But admitting that a survey might thus have been made in case of default, the question arises whether such default on the part of the claimants in this case has been shown.

The facts, as disclosed by the record, are substantially these:

On the 25th of April, 1867, L. Upson, then United States surveyor-general for California, instructed United States deputy surveyor G. H. Thompson to survey this rancho, and in those instructions recited that the "estimated funds for the expenses" thereof had been "duly deposited," but the deputy surveyor, having made an examination in the field, reported that the calls of the grant were so uncertain that he found it difficult to make a survey, whereupon the said surveyor-general, upon the suggestion of the claimants, directed a survey to be made according to their wishes, which said survey was made by Deputy Thompson, published under the act of 1864, and a plat thereof and accompanying papers sent to this office, with surveyor-general's letter of September 18, 1868, in which letter that officer expressed his opinion that the said survey was not in accordance with the grant or confirmation to José Dominguez. The survey thus returned contained an area of 208,742.33 acres, and, after examination here, both it and all the papers relative thereto were returned on the 23d of April, 1870, to the then surveyor-general, Sherman Day, and that officer was then instructed to make, at the expense of the parties in interest, such a survey of the rancho under consideration as he could approve, and publish the same under the act of July 1, 1864. To this letter the surveyor-general replied, by letter dated May 10, 1870, that the attorney of the claimants had "been notified of the receipt of the papers" in his office, and had "been in to examine the instructions" conveyed by our said letter of April 23, 1870. Further notice to the claimants was given

by Surveyor-General Day on the 5th of December, 1870, and by Surveyor-General Hardenbergh on the 27th of January, 1872, as appears by copies of letters of those dates filed in the record.

In this condition the case rested until the 21st day of July, 1873, when, by letter of that date, this Office directed the United States surveyor-general for California to apply a reasonable part of the appropriation for the survey of public land in California for the fiscal year ending June 30, 1874, to the "extension of the lines of public surveys over such of the private claims derived from Spanish and Mexican authorities as have been finally confirmed, but for which parties interested made no application within ten months from such final confirmation, the proceedings being authorized by the eighth section of "An act to quiet land titles in California," approved July 23, 1866. (Statutes, vol. 14, p. 220.) "In this connection," continues the letter, "I have to advise you that the attention of this Office has been called to the necessity for the extension of the public lines over the rancho Todos Santos, in Santa Barbara county; also, over that of Najalayegua, situated within nine miles of Santa Barbara, alleged to have been fraudulently surveyed so as to include forty-seven leagues of land, including claims of settlers outside of the proper limits of the rancho, who are anxiously awaiting definite location of the same so as to be able to get title to their respective improvements, but which they cannot obtain for the reason that the owners of this grant *refuse or neglect* to pay for having it surveyed.

Under these instructions Surveyor General Hardenbergh entered into a contract with William H. Norway on the 16th of August, 1873, for the survey of land covered by and adjacent to the Najalayegua rancho, the said contract specifying that "under the authority of the act of Congress approved July 23, 1866, all the lines of public surveys shall be extended over the rancho Los Prietos y Najalayegua, finally confirmed to José Dominguez, said rancho being a tract of land about one Spanish league in width, lying on both sides of the Santa Ynez river, easterly of the ruins of the old corral of Los Prietos." The survey, containing 43,588 acres, made under this contract by deputy surveyor Norway, was approved by you on the 24th day of June, 1874, and is the survey now before me for examination.

These facts show that the claimants had ample notice of the decision of this Office of April 23, 1870, rejecting the survey which had been made under their direction, and at their risk; that more than ten months had elapsed between the date of such notice and the initiation of proceedings under the eighth section of the act of July 23, 1866, and that between those dates no deposit for the payment of the cost of a survey was made by the said claimants; but those facts also unmistakably show that within ten months from the date of the approval of the act of July 23, 1866, the claimants had requested a survey of their claim, and made a deposit of money for that purpose; that a survey of the said claim was made by a United States deputy-surveyor, under direction of the United States surveyor-general of California, and that said survey was published in supposed conformity with the provisions of the act of July 1, 1864.

Referring now to the act of July 23, 1866, we find that the only claims authorized to be surveyed by the eighth section thereof are, first, claims confirmed at the date of said act, but for which a survey and plat had not been requested within ten months from such date, in accordance with the provisions of the sixth and seventh sections of the ac-

of July 1, 1864; and, second, claims confirmed subsequent to the passage of the said act of 1866, for which a request in accordance with the aforesaid sixth and seventh sections of the act of 1864 had not been made within ten months from the date of confirmation. This reference to the act of 1864 seems to enlarge the meaning of the word "requested," as used in the act of 1866, for, as under the act of 1864, no survey could be made except upon the request of a claimant who accompanied such request with a deposit of money sufficient to pay the cost of a survey and plat and for its publication, it is evident that by "requested," as set forth in the act of 1866, such a request was meant as would have enabled the surveyor-general under the act of 1864 to have made a survey—that is, a request accompanied by the necessary deposit for the payment of the cost of such survey, plat, and publication. But I find nothing either in the act of 1864 or 1866 that will warrant me in deciding that when such deposit has once been made in time by the claimants, the United States may thereafter order a survey under the act of 1866, because the claimants have subsequently failed to *again* request and *again* deposit, and I therefore decide that the claimants having once deposited in time the money required, such deposit was a bar to any subsequent proceedings on the part of the United States under the eighth section of the act of July 23, 1866. The Norway survey cannot, therefore, be considered by this Office as official.

Under these circumstances, with no official survey of the Los Prietos y Najalayegua before us for consideration, this Office might, as in the first survey, return the case to you without further comment, except to direct you to make a survey at the expense of the United States, under our instructions to you of July 8, 1874, relative to the use of the appropriation recently made for the survey of private grants in California; but from all the facts presented I am convinced such a course would delay the final adjustment of this claim, and I shall, therefore, proceed to a statement of the principles by which you will be guided in determining its boundaries in the field.

The confirmatory act declares that "the grant to José Dominguez of the land known as Los Prietos y Najalayegua, in the county of Santa Barbara, granted to him at Los Angeles, September 24, 1845, by Governor Pio Pico, and approved by the departmental assembly of Alta California, June 3, 1846, is hereby confirmed, and the surveyor general of California is hereby directed to proceed and survey said land in accordance with the original title-papers on file in his office, and when said survey shall have been approved by the Commissioner of the General Land-Office a patent shall issue for said lands to said Dominguez, or parties holding under him by inheritance or otherwise. This confirmation shall only be construed as a relinquishment on the part of the United States, and shall not affect the adverse right of any person whomsoever."

The original title-papers thus referred to show that in 1841 Dominguez petitioned the Mexican governor of California for the grant of a tract of land, as shown by a map annexed to his petition, and within the limits of the Poblacion of Santa Barbara; that on the 7th of June, 1841, said petition was referred to the prefect; that on the 27th of January, 1843, the alcalde of Santa Barbara was called upon for report concerning the land petitioned for; that on the 3d of March, 1843, the alcalde reported; that on the 23d of September, 1843, Dominguez again

petitioned the Mexican governor for a place called Prietos y Najalayegua; that on the 24th of September, 1845, the governor conceded the land petitioned for, the said concession reciting that it was made in conformity with the law of 24th (18th?) August, 1824, and the regulations of the 21st November, 1828, and that the whole expediente was referred to the departmental assembly, and approved by that body as follows:

"SIR: The committee on vacant lands have carefully examined the present expediente instituted by the citizen José Dominguez of the land of Prietos y Najalayegua, which was granted to him by the superior departmental government, in accordance with the laws on the subject; wherefore the committee submit for the consideration of your Excellency the following proposition:

"That the concession made to the citizen José Dominguez of the place of Prietos y Najalayegua, in the jurisdiction of Santa Barbara, be approved to the extent as shown by the map in the expediente, according to the title issued on the twenty-fourth of September last, in accordance with the law of the eighteenth of August, 1824, and Article 5th of the Regulations of the twenty-first of November, 1828. Committee chamber, in the city of Los Angeles, May 26th, 1846.

"S. ARGUELLO."

"ANGELES, June 3d, 1846.

"In the session of to-day the excellent departmental assembly approved the proposition of the foregoing report."

There is also in the expediente an unsigned grant dated September 24, 1846, but it contains no description or reference for description of the land donated, other than that set forth in the concession and in the approval by the departmental assembly, and it is, therefore, an unimportant document, for the concession seems to have been duly signed, and, beside, the approval by the departmental assembly, though not absolutely indispensable, yet, when given, was the official action that gave validity to the donation, and might either confirm, modify or nullify the governor's concession grant, (*United States v. Hartnell's executors*, 22 Howard, page 286,) though it seems it could not take the initiative in making such grants, that being by law vested in the governor, to whom it was an advisory body sustaining the same relation that the Senate of the United States does to the President in matters of treaties and appointments. (*United States v. Vigil*, 13 Wall., pages 451 and 452.)

With these title papers it is evident we have no description to guide us in locating the grant, except that it is a place called Prietos y Najalayegua, near Santa Barbara, as shown by the diseño, and that it was made under the colonization law of Mexico.

As, under these title papers and the confirmatory act of 1866, it is insisted by the claimants that they are entitled to a tract of land containing about forty-seven square leagues, I deem it proper, before proceeding further in the examination of the record in this case, to determine whether or not the grant, having been made under the colonization law, has been confirmed for a greater area than eleven square leagues.

It is a well-established principle of law that a public officer can bind the government he represents only by acts which come within a just exercise of his official powers. (Story on Agency, section A, 307. *Bennett v. United States*, 6 Nott & Hunt, p. 110. *Hunter v. United States*, 5 Peters, p. 188.) In the adjustment of Spanish grants in Louisiana and Florida, however, the Supreme Court of the United States held, in

United States v. Arredondo, (6 Peters, p. 727,) "that the public acts of public officers purporting to be exercised in an official capacity and by public authority, shall not be presumed to be a usurped, but a legitimate authority, previously given, or subsequently ratified, which is equivalent;" and in *United States v. Clark*, (8 Peters, 451,) and *Delassus v. United States*, (9 Peters, 134,) that doctrine is reasserted, and in the case of *United States v. Peralta et al.*, (19 Howard, p. 397,) the same principle is applied to grants in California made prior to the colonization law of August 18, 1824. But in *Cambuston's case*, (20 Howard, p. 63,) the court held that no such presumption as to the validity of official acts was necessary or admissible in respect to Mexican titles granted since the Mexican act of 18th August, 1824, and the (Mexican) regulations of 21st Nov., 1828, authority to make the grants in those cases having been expressly conferred on the governor, as well as the terms and conditions prescribed upon which they should be made, and that the court must look to those laws for both the power to make the grant and for the mode and manner of its exercise; and following the dictum in this case, the United States circuit court held, in *Den v. Hill*, (1 McAllister, p. 437,) that the power of the Mexican governors in California to grant even vacant land was restricted, and could be legally exercised only when in conformity with the provisions of the colonization decree of 1824 and the regulations of 1828. This decree and these regulations, as is well known, restricted grants in donations by the governor, or approvals of such grants by the departmental assembly, to any one person, to eleven square leagues, one of irrigable land, (*de regardis*,) four dependent on the seasons, (*de temporal*,) and six for the purpose of rearing cattle (*de abreradiso*). (See sec. 12, decree of August 18, 1824, and sec. 4, regulations of Nov. 21, 1828. *United States v. Larkin*, 18 Howard, p. 561. *United States v. Hartnell's executors*, 22 Howard, p. 286. *United States v. Vigil*, 13 Wall., p. 452; and *United States v. Pico*, 5 Wall., p. 539.)

That Congress may grant the public lands of the United States, with such limitations and in such manner as it may deem proper, is unquestioned; and though it has been seen by the references and recitals before given that the powers of the Mexican colonial authorities were restricted as to the alienation of the public domain appertaining to that republic to eleven square leagues to any single applicant, and though any attempted alienation of a larger area by such authorities would be of no effect, yet it does not follow that such non-effective or void act might not have been made effective—confirmed—by the same authority which prescribed the restrictions, limiting the powers of the provincial governor and assemblies, nor can there be any question that the Government of the United States, succeeding to that of Mexico, might, by the act of its Congress, give sanction and validity to a Mexican colonial grant attempted to be made in excess of the prescribed maximum of quantity, and clearly in defiance of the Mexican laws regulating that subject; and if it is found that by the terms of the act of June 12, 1866, such a grant or attempted grant was presented for the action of Congress, and found the favor of confirmation, it must be adjusted by this Office to the area awarded by the act, and not within the limits nor under the prescriptions of the Mexican law of 1824. This is but the iteration of the principle hereinafter stated, that if such be the intention of Congress a confirmation may make valid a void thing, and is as fully, to all intents and purposes, a grant as if, instead of the word

"confirmed," technical words of grant had been used. Upon this particular question, so far as its theoretic expression is concerned, this Office is in substantial accord with the views urged by the attorneys for the grant claimants. It is not intended, therefore, to be held that the Mexican law of 18th August, 1824, and the regulations of the 21st November, 1828, are to be considered as an attaching proviso, understood to every act of Congress having reference to a colonial grant; nor that they are necessarily of explanatory or limiting force in all such acts, though that they may be appealed to as furnishing, in some sense, a rule of interpretation and a measure of maximum quantity in many, and, perhaps, in most, such cases, is insisted upon. The rule in such cases, which seems to me to be consonant with reason, in accord with the current of decisions covering the subject, and which recognizes the authority of Congress in the disposal of the public domain, may be thus generalized: The confirmatory act will govern, without inferential qualification whatever as to quantity, location and boundaries, whenever there is found within its body distinctive provisions on these points. Such an act, though using words only of confirmation, would, in fact, carry over to the beneficiary every right which might pass by an original grant. If the confirmatory act does not, by its own terms, undertake to measure the quantity confirmed, the location and boundaries of the grant, but refers for these particulars to other acts, authorities, or office files, such reference will serve to constitute the act, authority or file, for all purposes of executive action or conveyance of privilege or title, an integral part of the act of confirmation, if, as thus constituted, location and boundary are clearly ascertainable, and are not limited or referred for quantity to the colonization regulations. In such case, also, the incidents and benefits attaching to an original grant might well be claimed; but where the act is one of confirmation by its terms, and refers for every possible evidence of right to grant, and extent and place of that which was given, to an authority bound by the limitations of the colonization laws, and when it further appears that the authority so acting under well defined restrictions not only is free from any suspicion, so far as may be gathered from the record, of attempted or purposed violation or evasion of the colonial law, but that in discharging this executive duty in the matter of the petition both governor and assembly in express terms attach to the grant by reference thereto the provisions in that behalf of the law of August, 1824, and of article fourth of the regulations of November, 1828, it is not perceived how room can be left for any enlargement of area beyond the lawful quantity of eleven square leagues. Such a case is one of *confirmation only*, and not of grant, by the United States, either original or resulting.

The rules of constructions in such cases are well settled by a long series of judicial decisions. That nothing passes by implication in a public grant was decided in *United States v. Arredondo*, (6 Peters, p. 738,) and cases there cited, and in *Charles River Bridge v. Warren Bridge*, 11 Peters, pp. 544 and 546;) and referring to the case last named the same court held in *Dubuque and Pacific Railroad Company v. Litchfield*, (23 Howard, p. 88,) that grants to a railroad company of public land are to be "strictly construed against the grantee;" that by such grants "nothing passes but what is conveyed in clear and explicit language;" and that as the rights claimed were derived solely from an act of Congress the donation stood "on the same footing of a grant by

the public to a private company, the terms of which must be plainly expressed in the statute, and if not thus expressed they cannot be implied." And again, in *Rice v. Railroad Company*, (1 Black, p. 380,) where the defendants contended, in argument, that legislative grants should be construed most strongly against the grantor, the court held that "legislative grants undoubtedly must be interpreted, if practicable, so as to effect the intention of the grantor; but if the words are ambiguous the true rule of construction is the reverse of that assumed by the defendants." Having due care to the subject-matter before the court, these decisions are in harmony with the conclusion in *Wilkinson v. Leland*, (2 Peters, p. 662,) that the common law meaning of the words "ratify and confirm," in a deed of confirmation between private parties, does not apply when those words are used in legislative acts, for when thus used, a confirmation may make valid a void thing, *if such is the intention of the legislature*. The court also held, in *Strother v. Lucas*, (12 Peters, p. 454,) and *Chouteau v. Eckhart*, (2 Howard, p. 373,) that "a confirmation by a law is as fully, to all intents and purposes, a grant as if it contained in terms a grant *de novo*." But these cases must be understood to apply only in cases where *the intention of Congress*, by the confirmation, was to make a grant, otherwise they are in conflict with the previous decision in 2 Peters, page 662, and are overruled in the subsequent and recent case of *Henshaw et al. v. Bissell*, (18 Wallace, p. 264,) wherein it was held that a confirmation, pursuant to the act of March 3, 1851, of a Mexican grant in California, established nothing but the validity of the claim as it existed at the date of the treaty of Guadalupe Hidalgo. But if these decisions are to be understood as relying for interpretation upon the intention of Congress, then they may all agree, the reason for the apparent conflict being found in the different intention of Congress in the use of the word "confirmed" in the various acts which the court construed in the cases cited. This seems to me the true reason, and I am strengthened in this conclusion from the fact that only with respect to claims in the Louisiana Purchase and Florida, where the relations of the Spanish Government to its agents for the disposal of land were such as sometimes to raise the presumption that the acts of such agents, apparently in excess of their authority, had been subsequently ratified, has a confirmation been held equivalent to a grant; while in California, where no such presumption was allowed in the settlement of Mexican colonization grants, because the duties of the granting officers were clearly and unmistakably defined by law, the word "confirmed" has been uniformly held to import simply the validation of a pre-existing equity or inchoate right. Upon this latter question there seems no reasonable doubt. The case of *Henshaw et al. v. Bissell* settled that such confirmations were not new grants, and the same ruling has been made by the acting Secretary of the Interior in the case of the California private land claim Caslamayomi, Forbes confirmee, holding that "the confirmation of their respective claims (Caslamayomi and Musalacon) by the United States was not a new grant, but confirmed to them what was theirs under the Mexican law."

From these definitions I deduce the rule—

That legislative grants must, if practicable, be interpreted so as to effect the intention of the grantor, and that where the words of the grant are ambiguous the construction must be most strongly against the grantee; and applying this rule—

That *if such be the intention of Congress*, a confirmation may make valid a void thing, and is as fully to all intents and purposes a grant as if, instead of the word "confirmed," technical words of grant had been used.

But with respect to the confirmations of colonization grants made by the Mexican governors in California, the only effect of such confirmation, as found in the act of March 3, 1851, is to validate the pre-existing equitable title.

I find nothing in the confirmatory act of June 12, 1866, in favor of Dominguez, that will warrant me in holding such confirmation to be a new grant. No words of grant are used in the act, nor is anything attempted to be confirmed except a Mexican grant to Dominguez, minutely described in said act as having been granted and approved on a given date by certain parties therein named. So carefully drawn is the act, it is believed no difficulty could arise in reaching the intent of Congress with respect to such grant without the light with which the decisions quoted have surrounded it; but when by reference to them we find that the confirmation of exactly similar grants made no new grant, the conclusion is irresistible that in this case nothing was intended to pass but the interest of the United States in land which had theretofore been granted by the Mexican government. Nothing appears to suggest any other conclusion, neither in the history of the claim nor in the record now before me, nor in the history of grants by the United States; for it has never been the practice of Congress to make new grants of this description to individuals without consideration and purely for the private benefit of the grantee. I, therefore, decide that the effect of the confirmation to José Dominguez by the act of June 12, 1866, was solely to confirm him in his title to a grant he had previously received from the Mexican authorities, and that as such grant was a colonization grant, and could not have exceeded in area eleven square leagues of land, the confirmation can only be held valid for that area, and then only provided it be found that the exterior boundaries, as shown by the original title-papers in the case, include an area equal to or exceeding eleven square leagues.

The confirmatory act of 1866 does not prescribe, by reference to prior acts, nor otherwise, the manner of taking testimony for the purpose of determining the boundaries of this claim; but when the law commands a thing to be done, it impliedly authorizes the performance of whatever may be necessary for executing its commands; and hence, under the provisions of the confirmatory act, in this case directing a survey to be made, and its approval by the Commissioner of the General Land-Office, this office will examine all the testimony now before it, if necessary to a correct location of the grant within the boundaries shown by the *diseño*, which we have seen is the only original title paper giving a description of the exterior boundaries of such grant.

The *diseño* shows a tract of land which, according to the scale attached, contains about one Mexican league from north to south, and about three Mexican leagues from east to west. As shown thereon, the eastern exterior boundary is the Arroyo de Carpenterie; the western, the Parajo de los Prietos. On the north and south the exterior boundaries are designated by marks evidently intended to represent hills or mountains. Through the centre, and running east and west, is shown the Najallagua cañon. Within the objects thus marked are also marks evidently designed to represent trees and hills or mountains, and also a place marked "Lomas Muertas," dead hillocks or hills.

We are fortunately able to determine with certainty the location of Paraja de los Prietos. Its location on the Thompson and Norway surveys agrees with its location in the survey of the rancho San Marcus; and that such location is correct is admitted by both claimants and contestants in this case. The location of this place as a western boundary also establishes that the cañon Najallagua of the *diseño* is the cañon through which runs the river Santa Ynez. I am also convinced that the marks on the *diseño* designating the width of the cañon Najallagua represent the immediate valley of the Santa Ynez, as shown both on Thompson and Norway's surveys. The true north and south boundary is more difficult to locate, though, according to the *diseño*, those boundaries are the first continuous range of hills or mountains running parallel with the Santa Ynez that are found going north and south from the narrow valley through which that river flows. On the north such a continuous range is shown on the plat of Thompson's survey, about eight miles south of the northern line of the rancho, as there represented, but on the south no such range appears on said plat north of the Santa Ynez or Santa Barbara mountains. The exact location of the northern boundary I shall not attempt to define further, for it cannot be established with certainty without more information with regard to the topography of the country than is contained in the record, though such boundary, as thus indicated, may easily be found on the ground by a surveyor; but on the south I am convinced the marks on the *diseño* were intended to indicate the range known as the mountains of Santa Ynez or Santa Barbara. This appears, as well from the report of Mr. R. C. Hopkins and the various surveys of that locality as from the affidavit of Dominguez, the grantee of the Mexican government. Hence I adopt as the true southern exterior boundary of this rancho the northern foot of the said range of mountains.

The theory of the claimants in the case, that the northern or southern slope of this range is included within the grant of Najalayegua, is, in my opinion, untenable. In the case of the rancho Caslamayomi, decided by this Office December 15, 1873, and affirmed on appeal August 13, 1874, by the Acting Secretary of the Interior, it was held that where the calls for boundary were hills or mountains, the foot of such hills or mountains was meant, and I see no reason why the same rule should not apply where, instead of being clearly described by words, such a boundary is indicated solely by rough scratches of a pen. An example of this kind may be found in the case of the rancho La Goleta, the *diseño* of which shows on the north a portion of the identical mountain now claimed by Najalayegua, yet the grant of La Goleta extended only to the foot of the mountain, and to that extent only was it surveyed and patented by the United States. With respect to this theory of claimant attention is called to the facts, first, that in February, 1843, while Dominguez's application for a grant was pending, he bought of one Lugo a tract of land on the southern slope of this mountain, and within the limits of Najalayegua, as now claimed; second, that the Najalayegua, as now claimed, on said southern slope, surrounds the buildings of the Mission of Santa Barbara, and bounds on the north the Pueblo of Santa Barbara, whereas in the *expediente* of Najalayegua the tract petitioned for is described as "alone occupied by wild animals," and no mention whatever is made either of the buildings or lands of the said Mission, or of the lands of the said Pueblo; third, that although the rancho La Goleta was petitioned for

and granted in 1846, after the date of the grant to Dominguez, and although a portion of the mountain now claimed as Najalayegua was made a boundary of La Goleta, yet no reference is found to Najalayegua in the *espediente* of La Goleta, though the other tracts bounding it, namely, Nicholas Den's rancho, Los Pueblos and the Mission property, are thereon clearly described. That the *espediente* of Najalayegua would give no further description of the southern boundary of that grant than a few marks of a pen on a rudely constructed map is highly improbable, if, in fact, that boundary was such well known tracts of land as the Mission lands or of the Pueblo of Santa Barbara; nor is it probable that in the *espediente* of La Goleta the north boundary of that rancho would have been designated generally as mountains if, in fact, the north boundary had been the Najalayegua. The fact, referred to in argument, that only one slope, and that the southern slope of this south boundary, was shown on the *diseño*, proves nothing, nor does it, in my opinion, raise any presumption that such slope was intended to be included in the grant. In the absence of anything in this case specially to show such a design on the part of the maker of this *diseño*, no such presumption could arise unless it were shown to be a general custom in making such maps to thus represent hills or mountains intended to be petitioned for. As a matter of fact, however, these *diseños* were usually made by the petitioner for the grant or some one of his neighbors, and hence each *diseño* is *sui generis* in its designations of natural objects. It may be added that it was formerly the practice of engravers on steel to shade one side only of designations of mountains. (See map of China, 1st American ed., printed in Philadelphia in 1832, of "New Edinburgh Encyclopedia.")

The eastern boundary, as shown on the *diseño*, is the Arroyo de Carpenterie, and the record shows that the Carpenterie is a well-known stream running wholly south of the Santa Barbara or Santa Ynez mountains, and along the northwestern boundary of the rancho El Rincon, granted by the Mexican authorities June 22, 1835, and patented by the United States November 22, 1872. It is thus evident that, going from Santa Ynez river, we cannot reach the said Carpenterie creek without crossing over a mountain range from two thousand to four thousand feet above the level of the sea, and which we have already determined to be the south boundary of the Najalayegua. The reason for this difference between the location of Carpenterie on the *diseño* and its actual location is found in the affidavit dated 8th May, 1874, of Dominguez, in which he states that "the Arroyo Carpenterie was marked on said *diseño* by guess as being in that direction, and without my personal knowledge of its exact position." Either the Carpenterie creek or the said mountain range must therefore be rejected as a boundary, and in rejecting one of those boundaries this Office must retain that which best satisfies the intent of the grant and confirmation. This, in my opinion, is the Santa Barbara range of mountains; for, omitting altogether the statement contained in Dominguez's affidavit before referred to, that he "claimed no land on the south side of the mountain bordering on the Pueblo lands of Santa Barbara," I am satisfied that the Najalayegua never reached the southern slope of said mountains, and hence never reached the Carpenterie. In addition to what has already been said relative to the extension of Najalayegua south of this mountain range, attention is called to the fact that the Arroyo Carpenterie is one of the boundaries of the rancho El Rincon,

which rancho had been granted and its boundaries measured under the Mexican Government years before the Najalayegua was petitioned for by Dominguez, yet the expediente of Najalayegua contains no reference to El Rincon.

The eastern boundary of Najalayegua will be about the same, whether such boundary be found by running a line due north from Carpenterie creek, or by finding the point on the east where the southern boundary intersects the range of mountains coming down from the north, and marked on Thompson's plat, "San Rafael range of mountains." It is evident, however, that the cañon "Nallagua" of the diseño could not extend farther east than this San Rafael range, and I, therefore, adopt said range on the east, as shown by the plat of Thompson's survey, as the true eastern exterior boundary of this claim.

It is, therefore, decided by this Office that the exterior boundaries of the rancho Los Prietos y Najalayegua are as follows: On the north the southern foot of the first range of hills or mountains running east and west, north of the narrow valley, through which runs the river Santa Ynez; on the south the northern foot of the range known as the Santa Barbara or Santa Ynez mountains; on the west the point established as a western boundary by Thompson's and Norway's surveys, and on the east the San Rafael range of mountains, as shown on the plat of United States Deputy Surveyor Thompson's survey of Najalayegua. Within these boundaries the claimants may select in compact form the eleven square leagues to which they are entitled, provided such selection be made within a reasonable time. If, however, the claimants neglect or refuse to make such selection, you will proceed to make a survey of this rancho at the expense of the United States, in accordance with instructions of July 8, 1874, from this Office, said survey to contain eleven square leagues within the exterior boundaries above set forth.

You will give notice of this decision to all parties in interest, allowing sixty days from the service thereof for appeal to the honorable Secretary of the Interior, and at the expiration of said sixty days you will make the usual return to this Office.

Very respectfully,

S. S. BURDETT, *Commissioner*.

Appeal waived.

III. IN NEW MEXICO, ARIZONA AND COLORADO.

No. 504.

SURVEYOR GENERAL OF NEW MEXICO.

The Surveyor General of New Mexico has power to examine private land claims in the territory acquired by the Gadsden treaty, 8 sec. act of July 22, 1854, (10 Stat., 309; 10 Stat., 575;) except that portion incorporated into the Territory of Arizona, 12 Stat., 664; 16 Stat., 230.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 17th Feb., 1872.

SIR:—I have considered the question submitted by you in your letter of the 10th instant, as to the power of the Surveyor General of New Mexico to investigate and report upon private land claims within the territory acquired from Mexico by the Gadsden treaty of 1853.

The 8th section of the act of July 22, 1854, (10 Stat., 309,) made it the duty of the Surveyor General of New Mexico, under instructions from the Secretary of the Interior, to ascertain the origin, nature, character and extent of all claims to lands under the laws, usages and customs of Spain and Mexico, and for that purpose gave him authority to issue notices, summon witnesses, administer oaths, and do and perform all other necessary acts in the premises.

It required him to make a full report to the Secretary of the Interior of all such claims as originated before the cession of the territory to the United States by the treaty of Guadalupe Hidalgo, with his decision as to the validity or invalidity of each of the same under the laws, usages and customs of the country, before its cession to the United States. It required the Secretary of the Interior to lay such report before Congress for its action, with a view to confirm *bona fide* grants and give full effect to the treaty, and until the final action of Congress, all lands covered by such claims, were reserved from sale or other disposal by the Government.

On the 4th of August, 1854, Congress passed an act (10 Stat., 575,) which provided, "That until otherwise provided by law, the territory acquired under the late treaty with Mexico, commonly known as the Gadsden treaty, be and the same is hereby incorporated with the Territory of New Mexico, subject to all the laws of said last named Territory."

What laws are here referred to as "the laws of said last named Territory?" Are they the laws passed by the Territorial Legislature of New Mexico, or the laws passed by Congress for the Territory of New Mexico, or both?

By the Gadsden treaty we acquired a portion of Mexican territory. It became necessary to provide for it a system of laws. It adjoined the Territory of New Mexico, which had such a system. Congress saw fit to attach it to that Territory and make it subject to all its laws. I think the phrase "all the laws of said last named Territory," should be construed to mean all the laws applicable to that Territory, no matter whether such laws are passed by the Territorial Legislature or by Congress. In either case they are the laws of the Territory, the laws to which the Territory is subject.

This construction renders all the territory acquired by the Gadsden treaty subject to all the laws governing New Mexico, and of course to the 8th section of the act of July 22, 1854, unless since the passage of that act the whole, or some portion thereof, has been "otherwise provided for by law."

A portion has been thus "otherwise provided for." It has been incorporated into the Territory of Arizona. (12 Stat., 664.) A Surveyor General has been given to it, (12 Stat., 664; 16 do., 230,) and he has been clothed with all the powers given to the Surveyor General of New Mexico by the 8th section of the act of July 22, 1854. (10 Stat., 304, sec. 1.)

So that as to that portion of the Gadsden purchase now incorporated into the Territory of Arizona, it is very clear that the Surveyor General of New Mexico has no jurisdiction, and no power to examine into, or report upon any private land claims.

As to the balance of the purchase, being that portion now remaining incorporated into the territory of New Mexico, I am of opinion that he has such power under the 8th section of the act of July 22, 1854, and

the act of August 4, 1854, and you will govern your action in accordance with this opinion.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 505.

BEAUBIEN AND MIRANDA.

The phrase "cinco leguas cuadradas" must be interpreted to mean five square leagues, and not five leagues square.

Where a Mexican colonization grant is confirmed without measurements of boundaries or of distinct specifications of the quantity confirmed, either in the statute or in the report upon which confirmation was made, no greater quantity than eleven square leagues to each claimant shall be set off to them, and that the tract be surveyed as compactly as practicable.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., December 31st, 1869.

SIR:—I have had before me the appeal of L. B. Maxwell from your decision in reference to the survey of Beaubien and Miranda claim to lands in New Mexico and Colorado, and after full consideration and examination find the facts to be as set forth in your communication of the 10th of September last. That the title in question was confirmed by its number (15) by the Act of the 21st of June, 1860, Statutes, Vol. 12, page 71, without any statement either in the Act itself, in the report of the committee of Congress, or in the papers accompanying such report, of the quantity of land contained in such claim. General boundaries by natural features of the country are given, but these afford no clue whatever to the extent of the tract. The only evidence on that subject is contained in a statement to the Mexican authorities made by Beaubien, one of the original grantees, that the whole quantity claimed by them did not exceed fifteen or eighteen square leagues. By the statement of the counsel for the parties in interest, as well as from the other evidence which you have adduced, it appears that under this grant a tract of land is now claimed containing upwards of four hundred and fifty square leagues, or over two millions of acres.

Under these circumstances it becomes the duty of the Department to give an interpretation to said act of Congress, and to fix, if possible, a rule which shall be applicable to this and similar cases.

By referring to the report of the Senate Committee of Private Land Claims made May 19th, 1860, by Mr Benjamin—under which report this claim was confirmed—we have what seems to be so clear an expression of the understanding and intent of the Committee, which was carried out by action of Congress in conformity with their report, that I think there can be no real difficulty in settling this case thereby. That report fixed, in the case of the claim of Scolly and others, the interpretation of the Spanish measurement by leagues, to wit, that the phrase "cinco leguas cuadradas," must be interpreted to mean five square leagues, and not five leagues square, and so in like cases. In the case of the claim of Vigil and St. Vrain, they also declare that "under the Mexican colonization law of 1824 and regulations of 1828, the extreme quantity allowed to be granted by the governor to any colonist was eleven square leagues. In the absence of any other guide your committee suggest that a restriction of the confirmation to the extent of

eleven square leagues for each claimant would be the utmost they could fairly expect, and would be not only a fair, but a liberal compliance with the obligation imposed on the good faith of the United States, under the promise of the treaty of Guadalupe Hidalgo." As these rules for the interpretation of a grant which would otherwise be vague are contained in the very report under which the grant in question was confirmed, there can be no hesitation in applying them to this grant, and to determine that it was the purpose and intent of Congress to confirm the grant to Beaubien and Miranda, to an extent not greater than eleven square leagues to each claimant.

It is therefore my opinion, and you may receive it as the rule for this and all like cases, that where a Mexican colonization grant is confirmed without measurements of boundaries or of distinct specification of the quantity confirmed, either in the statute or in the report upon which confirmation was made, no greater quantity than eleven square leagues to each claimant shall be surveyed and set off to them; that such quantity shall be surveyed in tracts of eleven square leagues each, the general position or place of such tracts to be selected by the grantee, and the tract to be then surveyed as compactly as is practicable.

In this case two such tracts of eleven square leagues are held to be covered by the grant, and may be surveyed accordingly. If the claimant shall agree thereto, a sufficient proportion of the money deposited for the survey will be retained to complete the survey so ordered, and the remainder may be returned to them in accordance with the usual forms. If they shall refuse to accept such survey, the whole amount of their deposit may be returned, and no survey whatever will be made of the grant as such, and no notice taken of the grant in the action of your Bureau under the general laws for the disposal of the public lands, unless, upon reference of the whole case to Congress, some other specific interpretation be given by legislative act to said statute of 1860.

I feel the less hesitation in coming to this conclusion, because I find in the original papers accompanying the report of the Congressional committee, that prior to the cession of New Mexico to the United States, under the treaty above referred to, the right of the claimants to this tract had been disputed upon the ground (among others) that a much larger tract was claimed by them than had been intended to be conveyed by the Mexican Government; that they claimed "a large number of leagues;" and it was in reply to this objection that Beaubien had declared that their grant did not exceed fifteen or eighteen leagues, and referred to judicial certificates accompanying his statement for proof of such limitations of his claim. After obtaining a grant upon so explicit a statement of the amount claimed, it would be in my judgment a gross fraud upon the Government to allow it to be extended to the enormous quantity of four hundred and fifty leagues or upwards, and in view of the fact that in Mr. Benjamin's report, from which quotation has already been made, it was declared that a pretence of an application for a grant of one hundred square leagues in the Scully case would have been "too extravagant for belief," it cannot be presumed that Congress intended to confirm a grant of the enormous character now claimed, unless the description of the tract itself and the measure of the boundaries were so given as to show definitely and explicitly the quantity intended to be conveyed.

In the course of the argument of this case, facts have been stated with reference to other grants, which make me deem it advisable that

an investigation should be made into the extent of private land grants already confirmed. You are therefore directed to inquire and report what claims, if any, are pending for alleged Mexican grants greater in extent than eleven square leagues, and what claims of such kind and extent, if any, have been already surveyed and patented by the United States.

The papers are herewith returned, and you will give to the parties in interest a copy of this letter, if they shall desire the same.

Very respectfully, your obedient servant,

J. D. COX, *Secretary.*

To the Honorable, the Commissioner of the General Land-Office.

No. 506.

BEAUBIEN AND MIRANDA—2d.

The act of June 21, 1860, confirming the Beaubien and Miranda grant, does not require the issuance of a patent, and is of itself equivalent to a patent. The decision of the Head of a Department is final, and binding upon his successor.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 27 July, 1871.

GENTLEMEN:—I have considered your application of May 29th, 1871, for an order directing a survey to be made of the tract of land granted to Messrs. Beaubien and Miranda, and confirmed by act of Congress of June 21st, 1860, (12 Stat., 71,) and alleged to have been assigned to the Maxwell Land Grant and Railway Company.

Said act confirms to Beaubien and Miranda a tract of land in the Territories of New Mexico and Colorado, said to have been granted to them by the Governor of the Province of New Mexico in 1841, and while that province belonged to the Republic of Mexico.

The act of Congress which justified the issuing of such an order was passed June 2d, 1862, (12 Stat., 410,) and related to the surveys of all claims or grants derived from any foreign country or government, and required them to be surveyed at the expense of the applicant, to be secured to the satisfaction of the Secretary of the Interior before the work was done. This act was repealed on the 18th February, 1871. (Part II., No. 31.)

The 3d section of the act of May 30th, 1862, (12 Stat., 409,) applies only to a case when a patent is required to issue. The act confirming the grant to Beaubien and Miranda does not require the issuing of a patent, and is of itself equivalent to a patent.

As the law now stands I am of opinion that there is no authority for me to make the order asked for. It appears from the statements contained in your applications, and from the records of this Department, that my predecessor, Mr. Secretary Cox, on the 31st day of December, 1869, decided that the grantees were, under the act of June 21, 1860, entitled to only twenty-two leagues of land; that he directed the Commissioner of the General Land-Office to permit a survey of only that quantity; that, if the claimants refused to accept such survey, their money deposited to pay the expenses of the survey should be returned to them, no survey of the grant, as such, should be made, and no notice of the grant should be taken in the action of the General Land-Office.

This order was made before any survey had been made of the tract. I am asked to reverse it.

However well satisfied I may be that the construction put upon the act of June 21, 1860, was erroneous, still, I do not feel justified in reversing it. If I can review and reverse in this case, then my successor, if he should differ with me and agree with my predecessor, could review and reverse my action, and so on indefinitely, and there would be no end to controversy.

For this reason it has been uniformly held by the learned gentlemen who have filled the office of Attorney-General, that the decision of the Head of a Department was final, and binding upon his successor. See the opinion of Mr. Wirt, 2 Op., 9; of Mr. Toucey, 5 Op., 29; of Mr. Johnson, Id., 123; of Mr. Black, 9 Op., 101, 301, 387; of Mr. Stanbery, 12 Op., 358; of Mr. Hoar, of April 26, 1869, and of Mr. Ackerman, of May 5, 1870. See also *U. S. v. Bank of Metropolis*, 15 Pet., 401.

I do not hesitate to say that, if the question as to the construction of this grant were *res integra*, and presented in such a form as to allow me to decide upon it, I should feel constrained to differ with my predecessor in regard to it; but as it is, I feel bound by his decision, and must leave the parties to Congressional or such other relief as they may be able to obtain.

I am, gentlemen,

Your obedient servant,

C. DELANO, *Secretary*.

MESSRS. BARLOW, LAROCQUE AND McFARLAND, *New York*.

No. 507.

E. W. EATON, ET AL.

Held—That the ruling in the case of Beaubien & Miranda (July 27, 1871) did not apply to an application for a survey of a private land claim in New Mexico where there had been a survey in 1860, which had not been acted upon by the Commissioner of the General Land-Office, until after the repealing act of 1871. (Part II., No. 31.)

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 30th October, 1873.

SIR:—I have considered the case of E. W. Eaton, et al., on appeal from your decision of the 16th of July last, refusing his application for a re-survey of his private land claim in New Mexico, confirmed by act of Congress, approved June 21st, 1860. (12 Stat. 71.) The record of the case shows that you felt bound to reject the application, under your construction of the ruling of the Department of July 27th, 1871, in the case of Beaubien and Miranda. I think the facts of the present case are quite different from those in the one referred to, and I am of opinion that the applicants are entitled to a re-survey, provided you cannot approve of the survey made in 1860.

I therefore reverse your decision, and herewith return the papers transmitted with your letter of July 30th last.

Very respectfully,

C. DELANO, *Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 508.

RANCHO LOS TRIGOS.

Construction of the Act of March 3, 1869, (15 Stats., 342,) and the 8th article of the Treaty of Guadalupe Hidalgo. (9 Stats., p. 929.)

The true criterion by which to determine the guarantee to be given a Mexican property owner under the treaty, is the guarantee which by the laws of the land is given to an American owner of the same class of property under the same circumstances.

The report of the Committee of Congress accompanying the bill may be examined, to determine the meaning of ambiguous language in a United States Statute.

Patents should be issued in case of all private land claims which have been confirmed by Congress and surveyed, and plats filed in the General Land-Office.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., February 28, 1874.

SIR:—I return herewith the papers transmitted with your letter of 9th May last, on appeal from your decision of 1st April last, in which you refused to issue patent for the New Mexico private land claim known as "Los Trigos." Your refusal was based on the rulings of the Department in the private land claim from the same Territory, known as the "Ortez Mine Grant" and the "Baca location."

Inasmuch as the question involved was simply the proper construction of the Act of Congress, approved 3d March, 1869, (15 Stat. 342,) and the 8th article of the treaty of Guadalupe Hidalgo, (9 Stat. 929,) I took the opinion of the Hon. Walter H. Smith, Assistant Attorney General, which was examined and approved by the Hon. George H. Williams, Attorney General.

They concur in the opinion that a proper construction of the act and treaty requires the issue of patents in this and like cases.

I adopt the views set forth in the opinion, reverse your decision in this case, and direct you to govern your action in similar cases by the principles announced in the opinion, a copy of which is transmitted herewith.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, D. C., February 21, 1874.

SIR:—I have examined the questions presented to you for decision by the appeal of the legal representatives of Francesca Trajillo, Diego Padillo and Bartolomo Marquez, from the decision of the Commissioner of the General Land-Office of April 1st, 1873, refusing to issue to them a patent for the rancho known as "Los Trigos," in the Territory of New Mexico, confirmed as No. 8, by the act of Congress approved June 21, 1860. (12 Stat., p. 11.)

The act of confirmation does not provide for the issuing of a patent, and no claim for one is set up under it. It is insisted, however, that the preparation and delivery of such evidence of title is made obligatory upon the Government, first, by the provisions of article eight of the treaty of Guadalupe Hidalgo, (9 Stat., 929,) and, second, by the provisions of the second section of the act of Congress approved March 3d, 1869. (15 Stat., 342.)

That portion of the eighth article of the treaty material to the present investigation is as follows, viz:

"In the said Territories property of every kind, now belonging to Mexicans not established there, shall be inviolably respected. The present owners, the heirs of these and all Mexicans who may hereafter acquire said property by contract, shall enjoy, with respect to it, guarantees, equally ample, as if the same belonged to citizens of the United States."

In my opinion the plain meaning of this article is that all these non-resident Mexicans, their heirs and Mexican assigns, shall be forever protected in their property of all kinds in said territories, and shall enjoy with respect to it the same guarantees as shall be enjoyed by American citizens owning the same class of property. No discrimination shall be made in favor of Americans and against Mexicans, with respect to any kind of property. The same ample guarantee shall be extended to each. Neither shall be better protected than the other. But the appellants herein go further and insist that a Mexican owner of one class of property is entitled to guarantees equal, not to what an American would have in the same class, but to what an American is entitled in another and a different class, and that because an American, under the pre-emption or donation laws of the United States, is entitled to a patent for his claim, a Mexican is also entitled to a patent for a Mexican grant. This position is, in my opinion, utterly untenable, and is not justified either by the letter or the spirit of the treaty.

Its effect might be to defeat the manifest object of the national compact, by rendering guarantees to Mexicans and Americans unequal, with reference to this very class of property. The peculiar phraseology of the treaty is such that the property rights of an American are not to be measured by those of a Mexican, but *vice versa*. Under the construction contended for, therefore, Mexicans could claim by reason of American rights in certain other property, the right to patents for Mexican grants, while American purchasers of the same grants would be left without similar guarantees, being protected by neither treaty nor statute. Can it be seriously contended that this is the legal effect of the eighth article of the treaty?

The true criterion by which to determine the guarantee to be given a Mexican property owner under the treaty is the guarantee which by the laws of the land is given to an American owner of the same class of property under the same circumstances. In my opinion this and nothing more is required, or justified by the language used. If American assigns of Mexican grantees are not by the laws of the United States entitled to patents for Mexican grants, then the Mexican grantees and their heirs and Mexican assigns are not so entitled under the treaty. The first section of the act of March 3, 1869, confirms by number five private Mexican grants in the Territory of New Mexico. "Los Trigos" is not one of the number, having been previously confirmed by the act of June 21st, 1860.

The second section of the act of 1869 is in the following words, viz: "And be it further enacted, that the Commissioner of the General Land-Office, shall without unreasonable delay cause the lands embraced in said several claims to be surveyed and platted at the proper expense of the claimant thereof, and upon the filing of said surveys and plats in this office, he shall issue patents for said lands in said territory, which have heretofore been confirmed by act of Congress and surveyed, and

plats of each survey filed in his office as aforesaid, but for which no patents have heretofore been issued." On the 6th day of September, 1870, your immediate predecessor, construing this section in the case of the "Ortez Mine Grant" then pending before him on appeal, and involving identically the same questions presented by the appellants in the case under consideration, said: "I may without offence use the language of Attorney General Bates, in speaking of another act of Congress, and say that 'It bears the marks of haste and inconsideration.' Upon careful examination I cannot believe that it was really intended to embrace all preceding claims that had been confirmed and surveyed." * *

On the 2d day of December, 1870, in the case of the "Baca Locations," then on appeal before you, the object of the appellants therein being to secure a reversal of your predecessor's decision in the "Ortez Mine Grant" case, you say: "I am of opinion that said decision is not so manifestly improper as to justify me in overruling it. I feel less reluctance in coming to this conclusion from the fact that Congress will soon assemble. Their attention to this subject of surveys is invited by my predecessor in his annual report, and if his construction of the act does not give full effect to the intent and purpose of that body, the difficulty can and no doubt will be obviated by further legislation."

The case under consideration again presents the question as to the proper construction to be given to this section, and it is said, *in arguendo*, that this is the first occasion in which counsel have been heard in support of the position that patents should be issued on claims confirmed before the passage of the act.

If we are permitted to look at the report of the Committee on Private Land Claims, who drafted and reported said act, and ascertain therefrom its meaning, the case will be free from difficulty, for that committee, (Wm. Orth, chairman,) among other things, said: (See Report No. 71, 40th Congress, 2d session, House of Rep.) "Accompanying this report is a bill, the passage of which we recommend, which provides for such confirmation; not by granting to the claimants a fee simple estate in those lands, but simply by way of quit claiming on the part of the United States to the heirs of the original grantees. * * *

The bill herewith reported also provides for the issuing of a patent in each case. It is not assumed that a patent is at all necessary in order to confer or confirm title in these cases, for we are aware that our Supreme Court has decided that confirmation by act of Congress and approved survey under it are sufficient evidence of title without any patent; but we believe it due to these claimants, whose original title papers have heretofore been surrendered to our government, that they should not be put to the trouble of providing, each for himself, or herself, a copy of the Treaty of Guadalupe Hidalgo, of the act of Congress of July, 1854, of the act confirming such title and the survey under it, in order to feel assured that these lands, which, in some of these cases, have been in the possession of these claimants or their ancestors for 100 years, is really their property. As American citizens they are entitled to a simple evidence of title, and such as is given to our citizens who acquire real estate from the government by the various modes provided by our laws. * * * In some of the acts heretofore passed in reference to lands under said treaty with Mexico patents have been required to be issued, while in others this has been overlooked; hence we provide, furthermore in this bill, that in all cases in which confirmation has been had without the

issuing of patents, such patents shall be issued, thus placing all claims under said treaty upon an equal basis."

The weight that should be given to the report of a committee drafting the act is scarcely in doubt upon the authorities. As early as 1823 Attorney-General Wirt, in speaking of an act authorizing the settlement of the accounts and claims of the Vice President, said: "That the accounting officers in settling the accounts and claims of the Vice President, have a right to adopt the report of the committee as establishing the principles which are to govern them in the examination thereof; for I consider the bill which accompanied the report as part of that report, and the passage of the bill into a law as a virtual adoption of the report, of which it was a mere consequence. * * *

* * * I do not think it would be proper on the part of the President in the exercise of his revising power to reject the principles established by the report of the committee, and to adopt others in conflict with them. Considering the report, as I do, in the light of a preamble to the law, I think that its principles ought to be respected so far as they go."

In *Aldridge v. Williams*, 3 How., 24, Ch. Justice Taney in speaking of an act of Congress said, "in expounding this law the judgment of the Court cannot in any degree be influenced by the construction placed upon it by *individual members* of Congress in the debate which took place on its passage, nor by the motives or reasons assigned by them for supporting or opposing amendments that were offered. The law as it passed is the will of the majority of both houses, and the only mode in which that will is spoken is in the act itself. And we must gather their intention from the language there used, comparing it, when any ambiguity exists, with the laws upon the same subject, and looking, if necessary, to the public history of the times in which it was passed."

It will be observed that the learned Ch. Justice was speaking of the opinions of individual members of Congress, and not of the committee having the matter in charge.

The Supreme Court in the case of the *United States v. Lynde*, 11 Wallace, 632, examined the report of the Committee on Private Land Claims in the Senate upon the bill then under consideration, and were evidently influenced by it. Mr. Justice Bradley, in delivering the opinion of the Court, said: "After the unsuccessful attempt made in the courts, as last referred to, under the Missouri act of 1824, the subject was again brought to the attention of Congress in May, 1858. Mr. Benjamin, who had been counsel for the claimants in the last case, made a report to the Senate, as chairman of the Committee on Private Land Claims, and submitted a bill for the relief of the claimants. This report contained a very full history of the treaties and litigation, giving a favorable view of the Spanish side of the question. Suffice it to say, in consequence of this report Congress passed the act of June 22, 1860."

There is no intimation in this opinion that there was any impropriety in looking into the report of the committee with a view of ascertaining the meaning of the law in question, but on the contrary there is an implied recognition of its propriety. And why not? It is well known that the important legislation of Congress is mainly decided upon in the committee room, and the unanimous report of the proper committee upon any measure is almost invariably a sure indication of its passage.

In the case now under consideration, I am of opinion that it is proper to look into the report of the committee accompanying the bill, for the purpose of aiding in and giving construction to the somewhat ambiguous

language used, and by so doing I find that the doubt is removed, and that it was intended to authorize the issuing of patents, in all cases which had been confirmed by Congress, and surveyed, and plats filed in the office of the Commissioner of the General Land-Office, and for which no patents had issued before the passage of the act.

I think the same conclusion must be arrived at from the language of the act, viewed in the light of the then existing facts. The five private claims confirmed by the 1st section had not been surveyed or platted, and therefore the latter part of the 2d section, which speaks of claims "which have heretofore been confirmed by acts of Congress, and surveyed, and plats of such survey filed in his office as aforesaid, but for which no patents have heretofore been issued," could not apply to them.

There was no need of this clause if it were intended to issue patents for them only. Patents were provided by the first clause of the section, and it might have stopped at the words, "we shall issue patents for said lands," and for the five claims would have been clearly and explicitly authorized. But the section does not stop there. It contains in addition thereto the following words, "in said Territories which have heretofore been confirmed by acts of Congress, and surveyed, and plats of such survey filed in his office as aforesaid, but for which no patents have heretofore been issued." These words mean something. They were not used without some purpose. They are found in the act, and cannot be overlooked or thrust aside as mere surplusage. They must be given some intent. What shall it be? Manifestly to my mind that patents shall also issue for all other claims which had been theretofore confirmed by Congress, and surveyed, and platted, and for which patents had not issued.

This construction harmonizes with previous legislation on like subjects. Stat., Vol. 10, p. 599, and Vol. 11, p. 374.

It gives force and effect to all the words used, and is in accordance with the clearly expressed understanding of the committee who reported the bill.

I advise its adoption, and that a patent issue for the "Los Trigos" claim.

Very respectfully,

W. H. SMITH, *Assistant Attorney General.*

HON. C. DELANO, *Secretary of Interior.*

Approved Feb. 25, 1874, by the Attorney General, and concurred in Feb. 28, 1874, by the Secretary.

No. 509.

RANCHO LOS TRIGOS—2D.

The Commissioner of the General Land-Office has no power to issue a patent upon a plat materially differing from the field-notes of survey, and he cannot change the sworn returns of a deputy surveyor to make them conform to the plat.

Decision by the Secretary, Dec. 5, 1874.

No. 510.

VIGIL AND ST. VRAIN.

1. Without the approval of the departmental assembly, no Mexican grant was complete.
2. The Mexican colonization law of 1824 limited grants to each individual to eleven square leagues.

3. The act of Congress of June 21, 1860, did not vest in Vigil and St. Vrain or in any person claiming under them, an absolute title to any definite tract before the required surveys were made.
4. By the act of July 4, 1836, (5 Stat., p. 107,) the Commissioner of the G. L. O. has jurisdiction over all executive acts of his subordinate officers.
5. All the duties of the officers of the Interior Dept. are in some sense executive, notwithstanding the fact that they are compelled frequently to form judgments and pass upon legal questions in their performance; and the fact that judgment and discretion are required in the discharge of such duties does not prevent them from being properly termed executive duties.
6. Under the acts of July 4, 1836, (5 Stat., p. 107,) June 21, 1860, (12 Stat., 71,) and February 25, 1869, (15 Stat., p. 440,) the duties of the Register and Receiver relative to derivative claimants under Vigil and St. Vrain are subject to the supervision and control of the Com. of the G. L. O.
7. Until title is actually vested in the claimants, Congress has full power over a private land claim derived from the Mexican Government. (See Part II., No. 9.)

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Jan. 23, 1875.

SIR:—On the 27th of October last I had the honor to address you, in answer to a question submitted in your letter of the 14th of October, relating to the supervisory power of the Commissioner of the General Land-Office over the decisions of the register and receiver of the land-office in regard to the rights of derivative claimants under Vigil and St. Vrain, whose claim under a Mexican grant for more than 4 000,000 acres of land was conditionally confirmed for about 97,000 acres by an act of Congress passed June 21, 1860. (12 Stats., p. 71.)

In my communication, above referred to, the conclusion was reached that the right of appeal to the Commissioner of the General Land-Office existed in cases decided by local land-officers, involving the rights of such derivative claimants.

Upon a motion to reconsider this opinion, the question has been re-argued before me fully, and with research and ability. The facts connected with it may be summarized as follows, viz :

Cornelio Vigil and Ceran St. Vrain claimed to have a grant from the authorities of the Mexican government of a large tract of country, embracing about 4,096,000 acres of land, or say 922 square leagues, being part of the territory acquired by this government under the treaty of Guadalupe Hidalgo, and consequently to be entitled, by virtue of the terms of such treaty, to such legal rights as their grant created. The description of their claim, as it appears in their application for the grant, is as follows :

The land embraced within the Huerfana, Piripa and Cuchara rivers to their junction with the Arkansas and Animas.

This description is so very indefinite as to subject the validity of the grant to serious doubts.

The documents relating to this alleged grant are found on pages 269–278, inclusive, of Report No. 321, H. R., Thirty-sixth Congress, first session. It is unnecessary to describe them here. Their examination shows this claim to have been imperfect in many particulars. Most of these imperfections, however, were curable; but there are three serious objections to which I deem it important to refer :

First. There was no formal grant, unless it may be found in the indorsement made by the governor of New Mexico, on the margin of the petition, in the following words :

SANTA FÉ, December 9, 1843.

To the justice of the peace of the proper jurisdiction, who will give the possession referred to by the petitioners, as the government desires to encourage agriculture and the arts.

ARMIJO.

DINACIANO VIGIL, *Secretary*.

This is simply an order for juridical possession, and to consider it a valid grant would, in my opinion, be to establish a dangerous precedent.

Second. This alleged grant never had the approval of the departmental assembly, and it is settled beyond controversy that, without such approval, no grant under Mexican law was complete. (See *United States v. Hartwell's Executors*, 22 Howard, p. 289.)

The case of *Hornsby et al. v. The United States*, (10 Wallace, p. 224,) might be regarded as modifying, to some extent, the decision in the case of *Hartwell's Executors*, in relation to the necessity for the approval of the departmental assembly. Both of these cases, however, sustain the opinion that the approval of the departmental assembly is required before the grant is complete. The case in 10th Wallace very fully establishes the necessity for the compliance with several conditions before a Mexican grant becomes valid, which are entirely uncomplied with in the case before me.

Third. This alleged grant embraced nine hundred and twenty-two square leagues to two individuals. It is well established that the laws of Mexico did not permit more than eleven square leagues to be conceded to one person. This limitation, applied to this claim, reduces the quantity to twenty-two square leagues. The case in Howard, referred to, is conclusive upon this point also. The syllabus of the case is as follows: The law of Mexico, passed in 1824, directed "that it shall not be permitted to unite in one hand, as property, more than one league of irrigable land, four leagues of farming land, and six for stock raising."

The question before me, however, cannot be decided by determining the validity or invalidity of this grant, but so much of its history as I have given seems necessary to a correct understanding of the whole subject.

There were many grants by the government of Mexico for land within the territory acquired by the treaty before referred to, and, to settle the rights of the private claimants under such grants, the act of Congress of June 21, 1860, entitled "An act to confirm private land-claims in the Territory of New Mexico," was passed. This act confirms certain claims which were referred to in a letter to the Commissioner of the General Land-Office of the 12th of January, 1858, written by the surveyor-general of the Territory of New Mexico, designated and numbered 1, 3, 4, 6, 8, 9, 10, 12, 14, 16, 17, 18, &c. No. 17 was the claim of Vigil and St. Vrain, and in the first section of the act confirming this claim it is provided "that the claim No 17, in the name of Cornelio Vigil and Cerran St. Vrain, shall not be confirmed for more than eleven square leagues to each of said claimants."

The second section of this act, so far as applicable to the question before me, provides: "That, in surveying the claims of said Cornelio Vigil and Cerran St. Vrain, the location shall be made as follows: The survey shall first be made of all tracts occupied by actual settlers holding possession under titles or promises to settle, which have heretofore been given by said Vigil and St. Vrain, in the tracts claimed by them, and, after deducting the area of all such tracts from the area embraced

in twenty-two square leagues, the remainder shall be located in two equal tracts, each of square form, in any part of the tract claimed by the said Vigil and St. Vrain selected by them."

The thus confirmed claim of Vigil and St. Vrain has never been definitely located on the face of the earth. It was known to Congress that certain settlers held possession of portions of the land claimed under this large Mexican grant, "under titles or promises to settle" given by Vigil and St. Vrain; and Congress, in order to adjust these questions, confirmed twenty-two leagues of the claim on condition that such settlers should have their possessions first surveyed, and that, after deducting the area of such tracts from the area embraced in the twenty-two square leagues confirmed, the remainder, if any, should be located by the surveyor general in two equal tracts of square form within the territory claimed by Vigil and St. Vrain, wherever they might select.

To assert that this conditional confirmation of twenty-two leagues of land gave to Vigil and St. Vrain, or to persons claiming under them, an absolute title to any definite tract before the required surveys were made, I think, is erroneous.

Nothing was done by the officers of the General Land-Office, under this act of Congress, prior to February 25, 1869, when an act to amend the aforesaid act was passed. (Stats., vol. 15, p. 440.) The first section of the amendatory act provides "that the exterior lines of the Vigil and St. Vrain claims, of eleven leagues each, subject to claims derived from said parties, as confirmed by the act of Congress of June 21, 1860, (U. S. Statutes, vol. 12, p. 71,) shall be adjusted according to the lines of the public surveys, as nearly as practicable within the limits of said claims, in as compact a form as possible;" and that "the claims of all actual settlers upon the tracts heretofore claimed by Vigil and St. Vrain, holding possession under titles or promises to settle upon the lands claimed by them, *who may establish their claims within one year from the passage of this act to the satisfaction of the register and receiver of the proper land district*, shall, in like manner, be adjusted according to the subdivisional lines of survey, so as to include the lands settled upon or purchased, and that the areas of the same shall be deducted or excluded from the adjusted limits of the claim of said Vigil and St. Vrain respectively; and the claims of all other actual settlers within the limits of the located claims of Vigil and St. Vrain shall be adjusted to the extent which shall embrace their settlements, upon their several claims being established, either as pre-emption or homestead, according to law; and for the aggregate area of this latter class of claims, Vigil and St. Vrain, or their legal representatives, shall be entitled to locate a like quantity of public lands, not mineral, according to the lines of public surveys, and not to exceed 160 acres in one section."

The second section of this amended act requires the General Land-Office "*to cause the lines of public surveys to be run in the region where a proper location would place the said Vigil and St. Vrain claims.*"

Thus it appears that these claims had no definite location on the 25th February, 1869. The same section provides that the expense of running said lines shall be paid by the General Government, and that, "*before the confirmation of the act of June 21, 1860, shall become legally effective, Vigil and St. Vrain shall pay the cost of so much of said surveys as inures to their benefit respectively,*" and that all settlers of the third class, i. e., pre-emption and homestead settlers, having

valid claims, "shall have the right to enter their improvements by a strict compliance with the pre-emption and homestead laws."

The third section provides "That, upon the adjustment of the Vigil and St. Vrain claims according to the provisions of this act, it shall be the duty of the surveyor general of the district to furnish proper approved plats to said claimants, or their legal representatives, and so in like manner to said derivative claimants, *which shall be evidence of title, the same to be done according to such instructions as may be given by the Commissioner of the General Land-Office.*"

The fourth section provides "That, immediately upon running the lines as provided in section second of this act, the surveyor general of said district shall notify the said Vigil and St. Vrain, or their agents or legal representatives, of the fact of such survey being made, and said claimants shall, within three months after notice of such survey, select and locate their said claims in accordance with such survey, and the provisions of this act and the act to which this is amendatory, and shall, within said time, furnish the surveyor general with the description of such location, specifying the lines of the same. And the party failing to make such selection and location, in such manner, and within such time, shall be deemed and held to have abandoned their claim, and their rights and equities under this act, and the act to which this is amendatory, shall cease and terminate."

The fifth section provides "That, in case of the neglect or refusal of said Vigil and St. Vrain to accept the provisions of this act, and the act to which this is amendatory, and to locate their said claims as provided therein, no suit shall be brought or proceedings instituted in any of the courts of the United States by such party, or by any one claiming through or under them, to establish or enforce said claims, or for any cause of action founded upon the same, after six months from the passage of this act."

This history brings my mind to the following conclusions:

First. Congress did not, BY THE ACT OF JUNE 21, 1860, regard the Mexican grant of 4,096,000 acres to Vigil and St. Vrain as legal, and therefore did not feel required, under the provisions of the treaty of Gaudaloupe Hidalgo, to recognize its validity.

Second. In order to settle the claims under this grant, Congress confirmed *conditionally* to Vigil and St. Vrain twenty-two square leagues, or 97,650.96 acres, to be located somewhere within the exterior limits of their claim of 4,096,000 acres, but where this location shall be is not provided for in the act, but is left for future determination.

Third. In making this conditional and indefinite confirmation, Congress provided that those who had claims derived from Vigil and St. Vrain should first be satisfied by having their tracts surveyed and located, and the quantity thus required should be deducted from the twenty-two leagues conditionally confirmed, and the remainder, if any, should be located in two equal tracts by Vigil and St. Vrain somewhere within the exterior limits of the grant claimed by them, at such place as they might select.

In my opinion the act of June 21, 1860, did not give to Vigil and St. Vrain, or to their grantees, any specific tract of land for which suit could be brought prior to the performance of the conditions embraced in the act. It simply provided for giving certain tracts to the derivative claimants of Vigil and St. Vrain, and for giving to Vigil and St. Vrain themselves what they may be found entitled to after certain conditions

had been accomplished by which such tracts might be ascertained and described.

This legislation did not meet the necessities of the case, and hence the act of *February 25, 1869*, amendatory thereof, was passed.

An analysis of this amendatory act leads to the following conclusions:

First. That our system of public surveys was first to be extended over the entire territory embraced in the Mexican claim of Vigil and St. Vrain.

Second. That whatever land Vigil and St. Vrain might be found entitled to, after satisfying the equities of these derivative claimants under them, should be given in as compact a form as possible, according to the lines of the public surveys to be made within the limits of their original claim.

Third. That the claims of settlers under Vigil and St. Vrain should, in like manner, be adjusted according to the lines of the public surveys, so as to include the lands settled upon or purchased *after such claims had been established to the satisfaction of the register and receiver of the proper land district*; the amount required to satisfy these settlers under Vigil and St. Vrain was to be deducted from the area confirmed.

Fourth. Those having valid pre-emption and homestead claims within the tracts remaining for and actually located by Vigil and St. Vrain were to establish such claims, and Vigil and St. Vrain were to be given a like quantity of other public lands, not mineral, to be taken according to the lines of public surveys, in satisfaction of what they might thus lose.

Fifth. That the expense of extending the public surveys over the entire area covered by the Mexican claim of Vigil and St. Vrain should be paid by the Government, and that before the confirmation of the said act of June 21, 1860, *shall become legally effective*, the said Vigil and St. Vrain or their legal representatives shall pay the cost of so much of said surveys as inures to their benefits respectively.

I pause here to observe that no part of the expense of the surveys, long since completed, has been paid by Vigil and St. Vrain, or their legal representatives, and therefore it is clear that the confirmation to them of twenty-two leagues has not become, and is not, *legally effective*.

Sixth. That upon the adjustment of the Vigil and St. Vrain claims according to this legislation, the surveyor general was to furnish proper approved plats to them and their derivative claimants, under instructions by the Commissioner of the General Land-Office, and such plats were to be evidence of title.

If the foregoing conclusions are correct, I may add that out of the immense claim of 4,096,000 acres only 97,650.96 acres were confirmed, and this quantity upon conditions not yet complied with, and therefore no valid title has yet passed to Vigil and St. Vrain, or their assignees, for any portion of the twenty-two leagues thus conditionally confirmed.

In reaching the conclusions thus far announced in this opinion, I have not considered the question involving the right and power of Congress to pass the act of February 25, 1869, amending the act of June 21, 1860. I do not intend by this remark to express any doubt as to the constitutionality of the act of 1869. On the contrary, in regard to private claims for public lands under acts of Congress, I am opinion that,

until the title is actually vested in the claimant, Congress has full power over the subject, and may, therefore, legislate accordingly. The history of our Government sustains the position.

It seems to me that the act of 1860 must be regarded as an expression of Congress in favor of the equities of Vigil and St. Vrain and their derivative claimants, growing out of this Mexican claim, and as providing a conditional mode of adjusting these equities.

The conditions, to some extent, were dependent upon acts to be performed by the Government or its officers, and before such conditions were performed, so as to render effective the act of 1860, Congress, in the exercise of its legitimate authority, by the act of 1869, prescribed additional conditions, and authorized new modes of arriving at these equities.

If this conclusion is correct, the act of 1869 was clearly within the power of the legislature; but, if I entertained any doubt upon this point, it would in no manner change my conclusions already announced, because I deem it my duty to follow the legislation of 1869, until it is pronounced unconstitutional by the tribunals of the country empowered to pass upon its validity.

The important question remaining is in regard to the power of the Commissioner of the General Land-Office to supervise the decisions of the register and receiver touching the rights of derivative claimants under Vigil and St. Vrain.

The act of February 25, 1869, provides that the rights of the derivative claimants who may establish their claims within one year from its passage, to the satisfaction of the register and receiver of the proper land district, shall, in like manner, be adjusted according to the subdivisional lines of survey, so as to include the lands so settled upon or purchased.

It is claimed that this act vested in the register and receiver the right of final adjudication upon the titles of these derivative claimants, and that they were thereby constituted a tribunal from whose decision no appeal can be taken.

It is claimed on the other side that this act devolved upon the register and receiver the performance of certain official duties "*appertaining to the survey and sale of the public lands, and relating to private claims of land,*" and that such duties are subject to the supervision of the Commissioner of the General Land-Office, on appeal to that officer.

A correct solution of this question requires a careful consideration of the provisions of the act of July 4, 1836, (Stats., vol. 5, p. 107,) reorganizing the General Land-Office, the first section of which provides:

That from and after the passage of this act, the *executive duties* now prescribed, or which may *hereafter be prescribed by law*, appertaining to the survey and sale of the public lands of the United States, or in anywise respecting such public lands, *and also such as relate to private claims of land*, and the issuing of patents for for all grants of land under the authority of the Government of the United States, shall be subject to the supervision and control of the Commissioner of the General Land-Office, under the direction of the President of the United States.

It was clearly the intention of Congress to place under the supervision and control of the Commissioner of the General Land-Office all the executive duties devolving on his subordinate officers at the date of the passage of said act, or which might thereafter be prescribed by law, in all cases appertaining to the survey, sale, &c., of public lands, as well as such as "*relate to private claims of land.*"

Language more comprehensive could hardly have been selected to express the purpose of Congress in reference to the supervision of the Commissioner of the General Land-Office over all the duties of his subordinates.

Those acquainted with the history of our public land system, and who are familiar with the character and qualifications of the local land-officers necessarily employed in the execution of the land-laws, will comprehend, without argument, the necessity of this supervision.

It is claimed that the only duties subjected to this supervision are *executive*, and that the duties devolving upon the register and receiver in reference to the rights of derivative claimants under Vigil and St. Vrain are *judicial*, and hence that such decision cannot be reviewed by the Commissioner of the General Land-Office.

The creation of an executive, legislative, and judicial department, with distinct powers conferred upon each, in the organization of the Federal Government, is used in argument to illustrate and enforce the distinction now relied on.

This illustration, however, does not lead my mind to the conclusion reached by counsel, who deny the right to appeal.

On the contrary, it seems to me that the Interior Department is part of the executive branch of the Government, and that all its officers are executive, being connected with the executive arm; and, therefore, all their duties are, in some sense, executive, notwithstanding the fact that they are compelled frequently to form judgments and pass upon legal questions in their performance.

To attempt to term some of these duties judicial and others executive, would, in my judgment, lead to difficulties and uncertainties necessarily embarrassing to the service.

I am unable, therefore, to recognize the conclusive force of the argument that an appeal cannot be taken from the decision of the register and receiver because it was purely judicial and in no sense executive.

To avoid being misunderstood on this point, I will add that very frequently duties are devolved upon executive officers which are merely ministerial. These duties do not require the exercise of judgment, and it is unimportant now to decide whether they are or are not executive. I am clearly of opinion that very frequently duties devolving upon executive officers, which require the exercise of judgment and discretion, are, with propriety, termed executive. I do not mean to say that they cannot be executive unless judgment and discretion are involved in their exercise, but what I wish to say is that the fact that judgment and discretion are required in the discharge of such duties does not prevent them from being properly termed executive duties. (See *Decatur v. Paulding*, 14 Peters, p. 497.)

However, if the act of February 25, 1869, viewed in connection with the legislation of July 4, 1836, should lead my mind to the conclusion that it was the *intention of Congress* to convert the register and receiver into arbiters for the final adjustment of the rights of these derivative claimants, I should have no hesitation in saying that an appeal would not lie from their decision; and in considering the intention of Congress, as expressed in the act of February 25, 1869, I feel called upon to consider also the then existing legislation in reference to the supervision of the Commissioner of the General Land-Office over all the executive

duties of the register and receiver, and also the circumstances connected with the act of February 25, 1869.

Let it be remembered that, by this act, Congress was providing for the extension of surveys over the entire claim of Vigil and St. Vrain, in conformity with our system of public surveys, thereby treating their whole claim as part of the public domain.

It was then provided that these derivative claimants of Vigil and St. Vrain should establish their claims to the satisfaction of the register and receiver. This devolved upon these officers very similar duties to those that are imposed under our homestead and pre-emption laws, which require judgment to be formed in regard to facts as well as to the laws governing such facts.

I cannot resist the conclusion that it was intended to subject to the supervision and control of the Commissioner, under the act of July 4, 1836, the duties imposed upon the register and receiver in regard to the derivative claimants under Vigil and St. Vrain. I doubt if Congress would have referred the rights of such derivative claimants to these officers, but for the fact that their decisions would be subject to such supervision.

If I had serious doubts in reference to the construction of the act now under consideration, I should be inclined to hold in favor of the right of appeal until such doubts were removed, because I think the public service would suffer from a contrary ruling. The amount of ability, intelligence, and knowledge which we are able to secure in persons necessarily employed as registers and receivers, would make it dangerous to devolve such important powers upon them without the right of appeal.

This question has been substantially decided by the Supreme Court of the United States in the case of *Barnard's heirs v. Ashley*, (18 Howard, p. 43,) at the December term, 1855. It was conceded in that case that, under the pre-emption laws of 1830-34, the power of ascertaining and deciding on the facts which entitled a party to the right of pre-emption was vested in the register and receiver of the land-district in which the land was situated, from whose decision there was no direct appeal to higher authority.

The court, referring to this, alludes to certain circumstances in which, under this legislation, the right of supervision over the acts of the register and receiver might be exercised by the Commissioner of the General Land-Office, and quotes the first section of the act of July 4, 1836. The court then proceeds to say :

The necessity of "*supervision and control*" vested in the Commissioner, acting under the direction of the President, is too manifest to require comment further than to say that the facts found in this record show that nothing is more easily done than apparently to establish, by *ex parte* affidavits, cultivation and possession of particular quarter-sections of land when the fact is untrue. That the act of 1836 modifies the powers of registers and receivers to the extent of the Commissioner's action in the instances before us, we hold to be true. But if the construction of the act of 1836 were doubtful, the practice under it for nearly twenty years could not be disturbed without manifest impropriety.

After carefully reviewing the act of February 25, 1869, I am unable to resist the conclusion that the duties therein devolved upon these officers are embraced in the act of July 4, 1836; and with the light thrown upon this question by the decision of the Supreme Court of the United States, before referred to, I am compelled to accept the con-

clusion that an appeal lies from their decision in the case now before me.

I am therefore of the opinion that it was not the intention of Congress to make the register and receiver final arbiters in reference to the rights of such derivative claimants. Had Congress intended to make their decisions conclusive, they would, I think, have used some expressions leading necessarily to the inference that such was their intention, or else they would have selected persons not connected with the Land-Office, and constituted them commissioners to decide upon the rights of such derivative claimants, as was done for the settlement of private land-claims in California, Louisiana, and elsewhere.

Before concluding this opinion, I wish to refer particularly to the act of Congress, passed June 2, 1858, entitled "An act to provide for the location of certain confirmed private land-claims in the State of Missouri, and for other purposes." This act, after making provisions in reference to the location of certain confirmed private land-claims, in its third section provides:

That in all cases of confirmation by this act, or where any private land claim has been confirmed by Congress, and the same, in whole or in part, has not been located or satisfied, either for want of a specific location prior to such confirmation, or for any reason whatsoever, other than the discovery of fraud in such claim subsequent to such confirmation, it shall be the duty of the surveyor-general of the district in which such claim was situated, *upon satisfactory proof that such claim has been so confirmed*, and that the same, in whole or in part, remains unsatisfied, to issue to the claimant, or his legal representatives, certificate of location for a quantity of land equal to that so confirmed and unsatisfied.

It will be observed that this act authorizes the surveyor-general, under certain circumstances, to issue a certificate of location for the quantity of land to which the applicant was entitled, and which land had, for any satisfactory reason, been lost to the applicant. This certificate was to be issued *upon proof satisfactory to the surveyor-general* that the claim had been confirmed, and that it remained, in whole or in part, unsatisfied. And such certificate, by the act, could be used in locating any of the lands of the United States subject to sale or private entry, at a price not exceeding \$1.25 per acre.

The duty thus imposed upon the surveyor-general was very similar to that imposed upon the register and receiver by the act of 1860.

It is difficult to discover any substantial difference in these two acts, so far as they impose certain duties upon the register and receiver and the surveyor-general.

Under this act the Department assumed to regulate by rules the conduct of the surveyor-general in discharging the duties devolved upon him, and the Land-Office has uniformly and continuously, for a period of sixteen years, exercised supervision and control over the acts of the surveyor-general connected with the discharge of his duties under the act of June 2, 1858.

The right of such supervision and control has never been questioned. It seems to have been conceded by all those interested in questions arising under this act that such supervisory power exists, and was authorized by the act of July 4, 1836.

The observations made in reference to the act of June 2, 1858, are applicable to the private act of June 21, 1860, (12 Stat., p. 866,) as well as to the practice of the Land-Office in executing the provisions of this private act. There are many other statutes that might be

referred to in support of the same conclusion, but it is deemed unnecessary to mention them particularly.

The refusal to recognize the right of appeal in the case now before me would reverse the practice of the Land-Office, and might result in disturbing interests that are at present free from doubt or controversy.

The motion under consideration is overruled, and the papers filed are herewith transmitted.

Very respectfully,

C. DELANO, *Secretary.*

HON. S. S. BURDETT, *Commissioner of the General Land-Office.*

No. 511.

EXTRACT OF A TREATY,

Made with the Mexican government, which accompanied a report dated November 14, 1851, from the United States surveyor-general of California, respecting the ratio of land measures between those employed under the Mexican government and those in use in the United States.

[From the Mexican ordinance for land and sea.]

Article 20th of the agreement entered into between the minister plenipotentiary of the Mexican republic and her agents in London, the 15th of September, 1837, with the holders of Mexican bonds.

20th. In compliance of what is ordered by the seventh article of the preceding law, and in order to carry into effect the stipulation in the preceding agreement, in regard to the holders of bonds deferred, it is declared that the act of which mention is made in said agreement answers to 4,840 English yards squared, equivalent to 5,762.403 Mexican varas square; inasmuch that the sitio de gañado moyer contains 4,338.964 acres, the Mexican vara having been found, by exact measures, equal to 837 French millimetres, and consequently to $\frac{1}{1000000}$ of the English imperial yard.

Reducing the ratio of 4,840 square yards and 5,762.403

square varas, the vara will be..... 32.99312
 Reducing the 4,338.464 acres..... 32.99311
 Reducing the fraction $\frac{1}{1000000}$ 32.992884
 The fraction mentioned in note, $\frac{1}{1000000}$ 32.96718

TABLE OF LAND MEASURES ADOPTED IN THE REPUBLIC OF MEXICO.

Names of the Measures.	Figures of the measures.	Length of the figures expressed in varas.	Breadth in varas.	Area in square varas.	Area in caballerias.
Sitio de gañado moyer.....	Square.....	5,000	5,000	25,000,000	41.028
Criadero de gañado moyer.....	Square.....	2,500	2,500	6,250,000	10.255
Sitio de gañado menor.....	Square.....	3,333 $\frac{1}{3}$	3,333 $\frac{1}{3}$	11,111,111 $\frac{1}{9}$	18.232
Criadero de gañado menor.....	Square.....	1,666 $\frac{2}{3}$	1,666 $\frac{2}{3}$	2,777,777 $\frac{8}{9}$	4.668
Caballeria de tierra.....	Right angled parallelogram.	1,104	552	609,408	1
Media caballeria.....	Square.....	552	552	304,704	$\frac{1}{2}$
Cuarto caballeria o Suerte de tierra.....	Right angled parallelogram.	552	276	152,352	$\frac{1}{4}$
Fenega de sembraduro de maiz..	Right angled parallelogram.	876	184	56,784	1-12
Sala para casa.....	Square.....	50	50	2,500	0.004
Fundo legal para pueblos.....	Square.....	1,200	1,200	1,440,000	2.086

* From a translation of a note at the foot of the page, it appears that the first figure 6 should be 9.

The Mexican vara is the unit of all the measures of length, the pattern and size of which are taken from the Castilian vara of the mark of Burgos, and is the legal vara used in the Mexican republic. Fifty Mexican varas make a measure which is called cordel, which instrument is used in measuring lands.

The legal league contains 100 cordels, or 5,000 varas, which is found by multiplying by 100 the 50 varas contained in a cordel. The league is divided into two halves and four quarters, this being the only division made of it. Half a league contains 2,500 varas, and a quarter of a league 1,250 varas. Anciently the Mexican league was divided into three miles, the mile into a thousand paces of Solomon, and one of these paces into five-thirds of a Mexican vara; consequently the league had 3,000 paces of Solomon. This division is recognized in legal affairs, but has been a very long time in disuse, the same as the pace of Solomon, which in those days was called vara, and was used for measuring lands. The mark was equivalent to two varas and seven-eighths—that is, eight marks containing twenty-three varas—and was used for measuring lands.

IV. JUDICIAL DECISIONS.

PRIVATE LAND CLAIMS.

(a) *In Alabama and Mississippi.*

A donation certificate, under the act of 3 March, 1803, gives a title superior to that acquired by a purchase at a public land sale. *Ross v. Barland*, 1 Pet., 655.

Such certificate is sufficient if it show the occupancy required by the act, and the particular land granted. *Ibid.*

The commissioners appointed under that act were empowered to hear evidence as to the time of the evacuation by the Spanish troops, and to decide upon the fact. *Ibid.*

A Spanish grant, confirmed under the act of 3 March, 1803, is valid, as against any other claimant under a Spanish title. *Robinson v. Minor*, 10 H., 627.

The decisions of the commissioners under the act of 31 March, 1814, and its supplements, are conclusive between the parties, in all cases within their jurisdiction. *Brown v. Jackson*, 7 Wh., 218. S. P. *Landes v. Brant*, 10 H., 348.

The exception in the act of 26 May, 1824, confirming certain lots to the city of Mobile, and to individuals, refers to grants made by Spanish authorities, after the acquisition of Louisiana by the United States and before the cession of Florida, of lands lying between the Mississippi and Perdido rivers, and in dispute between the two governments. *Pollard's Heirs v. Kibbs*, 14 Pet., 353. And see *Mobile v. Esclava*, 16 Pet., 234. *Mobile v. Hallett*, *Ibid.*, 261. *Mobile v. Emannes*, 1 H., 95. *Pollard v. Files*, 2 H., 591.

Such claims are within the power of Congress to confirm. *Ibid.*

Jurisdiction of the commissioners appointed to settle the claims of the New England Mississippi Land Company to the Yazoo lands. *Gilman v. Brown*, 1 Mas., 191. s. c., 4 Wh., 255.

(b) *In Louisiana, Missouri and Arkansas*

Under the acts of 1805 and 1807, the confirmation by the commis-

sioners of a land claim in Louisiana, does not necessarily enure to the benefit of the holder of the true French or Spanish title. *Strother v. Lucas*, 6 Pet., 763.

Where the French owner twice conveyed, and possession went with the junior title, and its holder presented his claim, which was confirmed, and the holder of the elder title did no act under the laws of Congress, he was held entitled to no benefit from such confirmation. *Ibid.*

To entitle a claimant to confirmation under the act of 1805, it is necessary that the parties should be residents, that the Indian title should have been extinguished, and that the land should have been actually inhabited and cultivated by the grantees, or for their use. *United States v. D'Auterive*, 10 H., 609. *United States v. Oastant*, 12 H., 437.

The act of 26 May, 1824, did not create any rights, or enlarge those previously existing. *Ibid.*

A patent issued to a claimant on a confirmation under the act of 1807 is conclusive evidence that he had the best Spanish title, and was the lawful owner thereof. *Landes v. Brant*, 10 H., 348.

Where the inchoate title was sold in execution, whilst proceedings were pending for its confirmation, and a patent was subsequently granted to the debtor, it enured to the benefit of the sheriff's vendee. *Ibid.* S. P., *Massey v. Papin*, 24 H., 362.

A patent was necessary to perfect a title founded on a settlement right before its issuance; the title, though finally confirmed, was but an equitable one. *Ibid.*

The act of 3 March, 1807, did not grant legal titles, it merely enables the owners of inchoate titles to obtain patents. *Burgess v. Gray*, 16 H., 48.

The act of 12 April, 1814, confirmed only such titles; as had been rejected for want of evidence of inhabitancy, on the 20th December, 1803. *Ibid.*

Under the act of 3 March, 1807, a claimant of land in Missouri obtained, by the decision of the commissioners, no title to any particular tract; a survey was necessary, in order to locate it, before his title could attach. *West v. Cochran*, 17 H., 403.

The proviso to the 10th section of the act of 3 March, 1811, merely withdrew lands claimed under that act from public sale, until the commissioners had decided on the claim. *Ham v. Missouri*, 18 H., 126.

The act of 18 June, 1812, confirming commons, &c., in St. Louis, excepted out of its operation only lands the claims where to had been confirmed by the board of commissioners. *Les Bois v. Bromell*, 4 H., 449. *Menard's Heirs v. Massey*, 8 H., 293. *Willot v. Sandford*, 19 H., 79.

The owner of an inchoate Spanish title to land in Missouri who had not presented a petition for its confirmation prior to 29 May, 1829, was barred by a subsequent legislative confirmation to an opposing claimant. *Ibid.* S. P., *Robinson v. Minor*, 10 H., 627.

The owner of such claim never had any standing in court, except as conferred upon him by the political power. *Ibid.*

Under the act of 1812, it was not necessary that the claimant of an out-lot should have had, either under the French or Spanish authorities, or those of the United States, any written recognition of his title, or any public survey. *Guitard v. Stoddard*, 16 H., 494. S. P., *Savignac v. Garrison*, 18 H., 136. *Glasgow v. Hortiz*, 1 Bl., 595.

Nor was he required by the act of 1824 to present the evidence of his claim and have it recognized. *Ibid.*

He might do so, and thus estop the United States and those claiming under them by subsequent grant, or he might rely on proving the necessary facts by parol, if his possession should be disturbed. *Ibid.*

Under the acts of 1812 and 1824, concerning town and village lots in Missouri, it was not competent for the vendor in 1839 to give a certificate of confirmation, and thereby divest an existing title under the United States. *Gamache v. Piquignot*, 16 H., 451.

An equitable Spanish title, not confirmed by the United States, cannot prevail against a legal title acquired from the latter. *United States v. King*, 3 H. 773.

The act of 29 April, 1816, did not confirm the title to a quantity of land exceeding one league square. *Ibid.*

The act of 11 May, 1820, did not confirm a land claim in Louisiana, erroneously reported as one already confirmed, but in point of fact not then confirmed. *Blanc v. Lafayette*, 11 H., 104.

The act of 26 May, 1824, for the trial of the validity of private land claims, continued in force until all appeals regularly brought up from the district courts were finally disposed of. *United States v. Boisdore's Heirs*, 8 H., 113.

The act of 26 May, 1824, applied only to inchoate titles; it had no effect on complete or perfect titles. *United States v. Reynes*, 9 H., 127. *United States v. Philadelphia*, 11 H., 609. *United States v. Castant*, 12 H., 437. *United States v. Pillerin*, 13 H., 9. *United States v. McCullagh*, *Ibid.*, 216. *United States v. D'Auterieve*, 15 H., 14. *United States v. Roselius* *Ibid.*, 31. *United States v. Roselius*, *Ibid.*, 36. *United States v. Ducros*, *Ibid.*, 38.

The courts had jurisdiction, though the petition stated the title to be a perfect one, if in point of fact it were not so. *United States v. Davenport's Heirs*, 15 H., 1.

If part of the land claimed had been disposed of by the government, and its grantees were not made parties, the court had no power to decree that floats that floats that issue to the claimants. *Ibid.* *United States v. Roselius*, 15 H., 31.

Under the act of 26 May, 1824, the district court had no power to decide, upon evidence of mere naked possession, unaccompanied by any paper title. *United States v. Power's Heirs*, 11 H., 570. *United States v. Rillieux's Heirs*, 14 H., 189. *United States v. Gusman*, *Ibid.*, 193.

An inchoate right to land was a right of property, protected by the treaty for the cession of Louisiana. *Delassus v. United States*, 9 Pet., 117. *Chouteau's Heirs v. United States*, *Ibid.*, 137. *Mitchel v. United States*, *Ibid.*, 711. *Soulard's Heirs v. United States*, 10 Pet., 100.

Lead mines are not excepted in the act of 26 May, 1824, for the confirmation of French and Spanish titles. *Ibid.*

Under the act 26 May, 1824, a claim to land in Missouri cannot be confirmed, unless some particular tract were severed from the mass of the public domain by an authorized survey, or by such a description as is capable of being followed by a survey pursuant to its calls. *Smith v. United States*, 10 Pet., 326. *Wherry v. United States*, *Ibid.*, 338. *United States v. D'Auterieve*, 15 H., 14. *Winter v. United States*, *Hemp.*, 344.

Under the act of 26 May, 1824, the court could not make an indefinite decree in favor of the petitioner for so much land as the government might have sold of that adjudged to belong to him; the precise quantity was to be ascertained. *United States v. Moore*, 12 H., 209.

Under that act, and the act of 17 June, 1844, reviving it, adverse claimants were required to be made parties. *Ibid.* *United States v. Davenport's Heirs*, 15 H., 1.

The act of 26 May, 1824, revived by that of 17 June, 1844, limits the right to file a petition under a French or Spanish grant to two years from the passage of the latter act. *United States v. Porche*, 12 H., 426.

Under the act of 26 May, 1824, the district court had no jurisdiction to make partition among the claimants. *Putnam v. United States*, Hemp., 332. *Bullitt v. United States*, *Ibid.*, 333.

Under that act the district court had no jurisdiction to confirm a claim to land lying mostly in another State. *Callender v. United States*, Hemp., 334.

In the interval between the 26 May, 1829, and 9 July, 1832, lands in Missouri claimed under imperfect French and Spanish titles, were not reserved from sale, and consequently a valid title acquired from the United States during that period will prevail over a Spanish title subsequently confirmed by Congress. *Delaureire v. Emison*, 15 H., 525. *S. P., McCabe v. Worthington*, 16 H., 86. *Easton v. Salisbury*, 21 H., 426.

But a patent issued in 1827 was void and did not become operative, *proprio vigore*, in the interval between 1829 and 1832. *Easton v. Salisbury*, 21 H., 426.

A confirmation, therefore, under the act of 4 July, 1836, to the original claimant, and his legal representatives, enured by way of estoppel to his assignee. *Stoddard v. Chambers*, 2 H., 284. *S. P., Massey v. Rapin*, 24 H., 362.

To bring a case within the 2d section of that act, so as to avoid a confirmation, the opposing location must be shown to have been made "under the law of the United States." *Ibid.*

A confirmation by a board of commissioners enures for the benefit of the claimant, though holding by a derivative title. *Strother v. Lucas*, 12 Pet., 412.

The acts of the commissioners to adjust land titles in Louisiana are conclusive as to all titles confirmed according to law. *Ibid.*

One claiming a share of the grant as assignee cannot have a decree unless he make satisfactory proof of the assignment. *United States v. Patterson*, 15 H., 10.

A third person, whose right, if any, is barred, as against the government, has no right to intervene in the proceeding for confirmation. *Ibid.*

A confirmation to a grantee or his legal representatives embraces representatives by contract, as well as by operation of law. *Hogan v. Page*, 2 Wall., 605.

In such case, the question as to the party to whom the confirmation should enure, is open in a court of justice. *Ibid.*

Where a part of the land claimed under a Spanish concession had been sold by the United States, the claimant was entitled to enter an equal quantity, to be located on public lands offered for sale in the same State. *Soulard's Heirs v. United States*. 10 Pet., 100.

If part of the land claimed under a Spanish title be granted to the claimant by act of Congress, without a survey of the residue, and accepted, this is satisfaction of the entire claim. *United States v. Roselius*, 15 H., 31.

Where a confirmed claim required a survey to ascertain its limits and boundaries, evidence is inadmissible of possession of different land,

to show that the survey made was erroneous. *Stanford v. Taylor*, 18 H., 409.

The confirmation of a land claim by act of Congress confers a perfect legal title, without a patent. *Grignon v. Astor*, 2 H., 319; *Chouteau v. Eckhart*, Ibid., 344. S. P., *La Roche v. Jones*, 9 H., 156.

A confirmed claim, when duly surveyed, gives a *prima facie* title, and the United States are bound by it, until set aside by the General Land-Office. *Cousin v. Blanc's Executor*, 19 H., 203. *Bryan v. Forsyth*, Ibid., 334.

The acts relating to incomplete titles in Louisiana only confirm estates already granted by the Spanish government; they do not enlarge the estate, or relinquish any right of the United States as successors of the king of Spain. *Josephs v. United States*, 1 N. & H., 197.

A confirmation by Congress of an imperfect Spanish title, in Louisiana, will not prevail against a subsequent entry and patent, unless the title or a survey under it were so specific as to ascertain the precise boundaries of the land. *Ledoux v. Black*, 18 H., 473; *Cousin v. Blanc's Executor*, 19 H., 202.

Where adverse claims for the same land are both confirmed by Congress, the elder confirmation gives the better title. *Willot v. Sandford*, 19 H., 79.

Where Congress directs a court to decide a private land claim, by the law of nations and of the country from which the title is derived, it seems, that the objection of alienage is waived. *United States v. Repentigny*, 5 Wall., 211.

Inchoate rights to lands in the Territory of Louisiana, at the time of its cession to the United States, when confirmed by Congress, took their effect wholly from the act of confirmation: so that an elder confirmee had a better title than a younger one, without regard to the priority of the equities, under the French and Spanish governments. *Dent v. Emmeger*, 14 Wall., 308.

A provisional permission to occupy, subsequently confirmed by the departmental assembly, accompanied by a possession of more than sixteen years, before the change of flags, is entitled to be confirmed. *United States v. Pico*, 1 Saw., 347.

(c) *In Florida.*

Under the act of 23 May, 1828, the acts of public officers of Spain, in making a grant of land, were presumed to be valid in the absence of fraud. *United States v. Arredondo*, 6 Pet., 691. S. P., *Delassus v. United States*, 9 Pet., 712.

The United States cannot enter on lands, in the possession of a private citizen, without office found. *Mitchel v. United States*, 9 Pet., 712.

The United States have a right to disprove a survey made by the Spanish surveyor-general of Florida, if the survey on the ground do not correspond to the land granted. *United States v. Breward*, 16 Pet., 143.

Under the act of 26 May, 1830, concerning land claims in Florida, the district court had jurisdiction of a claim rejected by the commissioners; such rejection not being deemed final action thereon. *United States v. Perchemart*, 7 Pet., 51.

The court could not under that act consider the question, whether or not the petitioner had conveyed to a third person. Ibid.

The jurisdiction conferred by the act of 1830 for the settlement of

land claims in Florida, is a special and limited one, and if the averments in the petition do not bring the case within it, the proceedings are void. *United States v. Clarke*, 8 Pet., 486.

Under the act of 26 May, 1830, where no question concerning the authenticity of title papers is made in the court below, proof thereof cannot be required in the supreme court on appeal. *United States v. Dalespine*, 15 Pet., 319.

After the 26 May, 1831, the courts of Florida had no jurisdiction to receive a petition for the confirmation of a private land claim. *United States v. Marvin*, 3 H., 620.

The supreme court having confirmed a claim for a specific tract, ascertained by a survey made under the order of the court below, the latter court could not, on petition, correct any alleged mistake in such survey. *Chaires v. United States*, 3 H., 611.

(d.) *In California.*

Under the act of 3 March, 1851, respecting private land claims in California, not only inchoate or equitable titles, but also legal titles, are to be passed upon by the court. *Fremont v. United States*, 17 H., 542.

A claim to a mining right or privilege under the Mexican laws, is the subject of confirmation under the act of 1851. *United States v. Castillero*, 2 Bl., 18.

A Mexican grant which the Governor had failed to lay before the departmental assembly for approval, is sufficient for confirmation under the act of 1851. *United States v. Reading*, 18 H., 1. s. c. Hoff. L. Cas., 18.

An inchoate title, followed by juridical possession, presents an equity which the United States are bound to respect. *United States v. Euright*, Hoff. L. Cas., 239.

Long continued and undisturbed possession of land, in California, under a simple permission to occupy it, does not give such equitable claim as is entitled to confirmation under the act of 1851. *Serrano v. United States*, 5 Wall, 541. *DeHaro v. United States*, *Ibid*, 599.

The size of a Mexican grant is no ground for refusing to confirm it. *United States v. Sutherland*, 19 H., 363.

A grant of land in California will not be confirmed where there is no evidence that any of the preliminary steps required by the Mexican law had been taken. *United States v. Cambuston*, 20 H., 59. s. c. Hoff. L. Cas., 86.

Grantees under a Mexican claim may prosecute it for confirmation in the name of the original claimant. *United States v. Sutter*, 21 H., 171.

The jurisdiction of the board of commissioners for the settlement of private land claims in California, and of the courts on appeal, extends not only to the adjudication of questions relating to the genuineness and authenticity of the grant, but also to those relating to its location and boundaries. *Ibid*.

Such jurisdiction does not terminate until the issue of a patent conformably to the decree. *Ibid*.

It is the duty of the surveyor general to cause all private claims, finally confirmed, to be accurately surveyed, and to furnish plats of the same. *Ibid*.

The confirmation of a Mexican land title, in the name of the original grantee, is binding on his assignees. *United States v. Cavilland*, 1 Bl., 339. See *United States v. Grimes*, 2 Bl., 620.

When the survey is completed and a patent issued, the assignees can assert their rights in the ordinary tribunals. *Ibid.*

The sole assignee of a Mexican title could proceed for its confirmation in his own name. *United States v. Grimes*, 2 Bl., 610.

But if the claim has been portioned out among several assignees the proceedings should be in the name of the original grantee. *Ibid.*

Where different claims are filed by the original grantee and several of his assignees, the cases ought to be consolidated. *Ibid.*

It was the duty of the commissioners to establish the boundary as well as the validity of the Mexican grant, as between the grantee and the government, not to settle disputes between several assignees. *Ibid.*

To sustain a claim to land under a Mexican grant, where no record evidence is produced, mere proof of hand-writing by third persons is not sufficient. *United States v. Osio*, 23 H., 273. s. c., Hoff. L. Cas., 100.

The testimony of Mexican officers cannot be received to supply or contradict the public records. *United States v. Neleigh*, 1 Bl., 298.

The transfer of a case to the district court of California under the act of 3 March, 1851, is not strictly an appeal, but an original proceeding. *United States v. Ritchie*, 17 H., 525.

Under the act of 31 August, 1852, the filing of a transcript with the clerk of the court operates, *ipso facto*, as an appeal. *Ibid.*

The act of 1851 recognizes both legal and equitable rights, and is to be administered in a liberal manner. *United States v. Moreno*, 1 Wall., 400.

Land claims, arising by virtue of a right or title derived from the Spanish or Mexican government, are required to be presented to the land commissioners for adjudication. *Higuera v. United States*, 5 Wall., 827.

Final decrees in such cases, where no appeal is taken, are conclusive between the government and the claimants. *Ibid.*

The district court in such case has power to order a survey, and to set it aside, or to correct and modify it. *Ibid.*

Parties may appeal from such order, but the appeal does not open the decree of confirmation. *Ibid.*

Such decrees are to be construed by the ordinary rules of the common law. *Ibid.*

Where a claimant has presented his petition to the board of commissioners, but has neglected to support it by evidence, within two years thereafter, such neglect does not bring the claim within the limitation prescribed by the act of 1851. *Swat v. United States*, Hoff. L. Cas., 230.

In proceedings under the act of 3 March, 1851, the intervention of adverse claimants is not to be discouraged. *United States v. Fossat*, 20 H., 413.

The record of the district court for the northern district of California, in a proceeding to confirm a Mexican title, not showing that the land lay within that district, the cause was remanded for amendment. *Cervantes v. United States*, 16 H., 619.

Where there are conflicting claims under the act of 1851, and the United States bring the cause before the supreme court, without appearing to have any interest, the court will remand the record, with directions to allow the contesting parties to proceed in the mode prescribed by the act of Congress. *United States v. White*, 23 H., 249.

Where a cause is remanded for further proceedings, involving addi-

tional proofs, the United States are entitled to a reasonable time in which to close their testimony. *United States v. Fossat*, Hoff. L. Cas., 373.

Appeals under the act of 1851 are subject to the general regulations of the judiciary acts. *Castro v. United States*, 3 Wall., 46.

Under the act of 1851, an appeal may be granted, after the expiration of the term at which the decree was rendered. *Noe v. United States*, Hoff. L. Cas., 242.

Under the act of 31 August, 1852, if the attorney-general give notice of his intention not to prosecute an appeal, the district court may give leave to the claimant to proceed on the decree of the board of commissioners. *Beard v. Federy*, 3 Wall., 478.

What is necessary to be set out in the petition in order to give jurisdiction to the commissioners. *Ibid.*

A patent granted under the act of 1851 is conclusive as against all persons not holding superior titles, such as will enable them successfully to resist any action of the government in disposing of the property. *Ibid.*

Under the act of 1852, on failure to file a notice of an intention to appeal, within six months, an appeal taken must be dismissed; the district court has no power to allow such notice to be filed *nunc pro tunc*. *Yturbe v. United States*, 22 H., 290, s. c. Hoff. L. Cas., 273.

On an appeal by the claimant, seeking a modification of the decree, as to the extent of the grant, its validity is not open to consideration. *Malarin v. United States*, 1 Wall., 282.

An appeal from the confirmation of a Mexican grant, does not come up as on a bill of exceptions to evidence, evidence of fraud or forgery should be submitted to the court below. *United States v. Johnson*, 1 Wall., 326. *United States v. Auguisola*, *Ibid.*, 352. *United States v. Yorba*, *Ibid.*, 412.

If the government claim no interest in the lands, but allege that the controversy is one between individuals, an appeal by the United States will be dismissed. *United States v. Morillo*, 1 Wall., 706.

An appeal lies to the supreme court under the act of 14 June, 1860. *The Fossat Case*, 2 Wall., 649.

If no appeal be taken by the United States, they may appear as appellees, but cannot demand a reversal or change of the decree. *Ibid.*

Under the act of 14 June, 1860, no person has any standing in the supreme court, on appeal, who was not admitted to intervene in the court below. *United States v. Estudillo*, 1 Wall., 710.

Such intervention should appear on the record, to give the parties a standing in court. *Ibid.*

The confirmation of a claim, under the act of 1851, enures to the benefit of the confirmer, only so far as the legal title is concerned; it does not affect equitable interests in third persons. *Townsend v. Greeley*, 5 Wall., 326.

Where both parties have obtained confirmations by a board of commissioners, for the same land, the courts may go behind the confirmation and ascertain which has the superior equity. *Berthold v. McDonald*, 22 H., 384, S. P. *Thurn v. United States*, Hoff. L. Cas., 298.

Prior to the act of 14 June, 1860, if a survey of a confirmed Mexican grant did not conform to the decree, the remedy was with the Commissioner of the General Land-Office, prior to the issuing of the patent; the

district court had no jurisdiction to grant relief. *United States v. Sepulveda*, 1 Wall., 104.

The confirmation of a Mexican grant does not affect the rights of third persons, whose lines may conflict with those of the tract confirmed to the claimant. *United States v. Sanchez*, Hoff. L. Cas., 133.

If the decree confirming a claim, under the act of 1851, fix the boundaries of the tract, the survey must conform thereto. *United States v. Halleck*, 1 Wall., 439. *The Fossat Case*, 2 Wall., 649.

The act of 1860 gives the district court no power to change the decree of confirmation. *The Fossat Case*, 2 Wall., 649.

A reference to the original title-papers will not rectify an erroneous description. *United States v. Halleck*, 1 Wall., 439.

A confirmation fixing the boundaries of the tract, acquiesced in by the United States, is conclusive, not only as to the title, but also as to the boundaries. *Ibid.* *United States v. Billing*, 2 Wall., 444.

It seems that in locating land under a confirmed Mexican grant, compactness of form, and conformity to the lines of the public surveys must be preserved, to the exclusion of the selections of the grantee. *The Sutter Case*, 2 Wall., 652. *United States v. Armijo*, 5 Wall., 444. s. c., Hoff. L. Cas., 248.

Such grant may, however, be located in two parcels, where from the character of the country, the entire quantity cannot be located in one tract. *Ibid.*

Where the boundaries designated embrace a greater quantity of land than that confirmed, the grantees may select the location of the proper quantity, in one body and compact form, subject to their election by previous residence and by sales made by them. *United States v. Pacheco*, 2 Wall., 587. *United States v. Armijo*, 5 Wall., 444. s. c., Hoff. L. Cas., 248.

Where the sea or a bay is named as a boundary, the line of ordinary high water mark is intended, where the common law prevails. *Ibid.*

If the government and the claimant be both satisfied with the location of the grant, a third person who seeks to contest it, must show title to some part of the land embraced in the survey. *Dehon v. Bernal*, 3 Wall., 774.

When all the elements prescribed by the decree cannot possibly be complied with, a survey which conforms to it as near as may be will not be disturbed. *Ibid.*

The limitation contained in the condition of the grant must govern, and the claimant be confirmed to the precise quantity of three square leagues. *Marsh v. United States*, Hoff. L. Cas., 301.

The holder of any interest in a California land claim, however small, has a right to insist upon a fair location of the quantity granted, however such location may clash with the wishes of his co-owners. *United States v. Armijo*, 5 Wall., 444. s. c., Hoff. L. Cas., 248.

A proceeding in the district court, in a land case, on an appeal from the Board of Commissioners, is an original one, and the whole case is open. *Grisar v. McDowell*, 6 Wall., 363.

An appeal to the Supreme Court suspends the effect and operation of the decree, only when by the judgment of the appellate court, the claim of the confirmee may be defeated. *Ibid.*

A decree of the board of commissioners, or of the Federal courts, when it becomes final, takes effect, by relation, as of the day when the claim was presented to the board. *Ibid.*

If the evidence of a boundary line between two Mexican grants be conflicting and irreconcilable, the Supreme Court will not interfere with the decision of the court below. *Alviso v. United States*, 8 Wall., 337.

The United States cannot object to the correctness of a boundary line in an approved survey, if they have not appealed from the decree approving it. *Ibid.*

An order of the district court, allowing a third party to intervene, under the act 14th of June, 1860, is a decision that he possesses an interest entitling him so to intervene; and such interest cannot be questioned, for the first time, in the appellate court. *Ibid.*

The board of commissioners erected under the act 3 March, 1851, had jurisdiction of a claim, under a grant of a lot by a Mexican governor, within the limits of the pueblo of San Francisco; and such claim was not required to be presented in the name of the corporate authorities of the city. *Lynch v. Bernal*, 9 Wall., 315.

The 14th section of the act of 1851, (1 Bright. Dig., 113,) does not apply to all lots situated within the limits of a city, town, or village, which existed on the 7th of July, 1846, but only to the lots owned or claimed by such city, town, or village. *Ibid.*

It has no application to lots held adversely to the corporation or town, by independent titles. *Ibid.*

If the board had jurisdiction of a claim, its adjudication, however erroneous, cannot be collaterally assailed, on the ground that it was made upon insufficient evidence. *Ibid.*

The exception made in the final decree of confirmation to the city of San Francisco, is not limited to parcels of land claimed under perfect grants, but includes all parcels claimed by private parties, under grants from the authorities of the former government, the claims to which had been, or might be, subjected to the examination of the federal tribunal. *Ibid.*

Under the act 3 March, 1851, the court possesses the power to open a case, for the purpose of hearing newly-discovered evidence upon the title of the claimant. *United States v. Rocha*, 9 Wall., 639.

In passing upon a Mexican grant in California, the question is, what right did the grantee acquire from the Mexican authorities? The court cannot inquire into any acts or omissions by them, since these authorities were displaced, to wit, the 6th July, 1846. *Hornsby v. United States*, 10 Wall., 224.

By the treaty of cession, the United States were bound to protect all titles to lands, legal or equitable, perfect or imperfect. *Ibid.*

The confirmation of a land claim under the act of 1851, even when followed by a patent, is not conclusive of the equitable rights of third parties; they may assert their rights in a court of equity, against the patentee, and parties claiming under him, with notice. *Meador v. Norton*, 11 Wall., 442.

A decree confirming a claim under a Mexican grant, with a proviso that it should be without prejudice to parties claiming under the original grantee, which is affirmed on appeal, so far as it confirmed the original grant, gives to parties claiming under the confirmee the same benefits as were reserved to them by the original decree. *Steinbach v. Stewart*, 11 Wall., 566.

The confirmation of a Mexican grant segregates the land, when surveyed, from the public domain, and invests the confirmee with the legal title; it does not, however, conclude the equitable rights of third

persons under the same title. *Carpentier v. Montgomery*, 13 Wall., 480.

Where a Mexican grant has been confirmed, and a patent issued to parties claiming under a defective derivative title, a *bonâ fide* purchaser from them is not chargeable with notice of the invalidity of such derivative title. *Hardy v. Harbin*, 1 Saw., 194.

The commissioner of the General Land-Office has jurisdiction to revise or set aside a survey of a Mexican grant, made by the United States surveyor general for California. *Bissell v. Henshaw*, 1 Saw., 553.

Proceedings to enforce Mexican grants, under the act of 1860, are judicial in their nature, and conclude all parties thereto, and those who are required to make themselves parties; they are in the nature of proceedings *in rem*, and all parties claiming any interest must intervene, or be concluded. *Ibid.*

Where two patents interfere, the parties claiming under the elder grant, though the last be finally located and patented, have the better title. *Ibid.*

FRENCH TITLES.

A French grant in Louisiana, in 1722, unaided by a survey, the calls of which are too vague to designate any particular tract of land, will not support an ejectment. *Denise v. Ruggles*, 16 H., 242.

A French grant of land in Louisiana, after the 3 November, 1762, the date of its cession to Spain, by the treaty of Fontainebleau, is void. *United States v. D'Auterive*, 10 H., 609. S. P., *U. Montault v. United States*, 12 H., 47. *United States v. Pillerin*, 13 H., 9.

Such title has not been confirmed by any act of Congress. *Ibid.*

In Louisiana, until 1798, while the power to grant lands was vested in the military governor, the commandants of posts were employed to make the original concession and order of survey, and to put the applicant in possession. *Delassus v. United States*, 9 Pet., 117.

A grant or concession made by an officer authorized to make it, is presumed to be conformable to his powers. *Ibid. Strother v. Lucas*, 12 Pet., 410.

O'Reilly's regulations were intended for the government of subordinate officers, not to control the power of the governor. *Ibid.*

Concession of land by the governor-general of Louisiana confirmed. *Ibid. Chouteau's Heirs v. United States*, 9 Pet., 137. *Mackey v. United States*, 10 Pet., 340.

The regulations of O'Reilly were not in force in Upper Louisiana. *Mackey v. United States*, 10 Pet., 340.

After the power to grant laws was transferred, in 1798, from the military governor to the intendant-general, the commanders of posts were sub-delegates; but their power to make orders of survey, and thus grant incipient rights, capable of being perfected into complete titles, was not affected. *Chouteau's Heirs v. United States*, 9 Pet., 137. *Mackey v. United States*, 10 Pet., 340.

In a contest between a French and a Spanish title, a patent from the United States does not affect the rights of the other party. *New Orleans v. De Armas*, 9 Pet., 223.

A French grant on condition of improvement and occupancy, which has not been complied with, cannot, after a great lapse of years, be allowed to prevail against the title of the government; an act of Congress appropriating the land is equivalent to an "office found,"

and reunites it to the public domain. *United States v. Repentigny*, 5 Wall., 211.

If the documentary evidence, produced by the claimant, of an incomplete title to land in the French cession of 1803, contain no sufficient boundary lines, so as to sever it from the public domain, the concession creates no private right of property which can be asserted in a court, without an antecedent survey and location. *Maguire v. Tyler*, 8 Wall., 650.

The courts have no jurisdiction to determine a controversy between two claimants, setting up distinct imperfect titles, under the former government, to the same parcel of land; the political power alone is competent to determine to which the perfect title shall be made. *Ibid.*

Where a patent has been issued to one who protests against the way in which it was made, and the record shows that he never accepted it, the Secretary of the Interior may recall it. *Ibid.*

Where a patent is issued on a claim that has no certain limits, reserving all valid adverse rights, a second patent to another claimant, for a portion of the same land, is operative to convey the title. *Ibid.*

SPANISH TITLES.

The laws of Spain, as to the disposition of the royal domain in Louisiana, whilst it was held by Spain. *Strother v. Lucas*, 12 Pet., 411. • *United States v. Delespine*, 15 Pet., 319. *Les Bois v. Bramell*, 4 H., 449. *Bissell v. Penrose*, 8 H., 317. *Lecompte v. United States*, 11 H., 115. *United States v. Power's Heirs*, *Ibid.*, 570. *United States v. Moore*, 12 H., 209. *United States v. Simon*, *Ibid.*, 433. *Winter v. United States*, Hemp., 344.

Form of a complete Spanish title. *Menard's Heirs v. Massey*, 8 H., 293.

The authorities of Spain had power to make grants of the public domain in Florida, in accordance with their own ideas of the merits of the grantee, and our courts can only pass on the question whether a grant was made, and what was its legal effect. *United States v. Haussen*, 16 Pet., 196. *United States v. Acosta*, 1 H., 24.

From 1774, the governor of East Florida had power to grant lands, without special restriction as to quantity. *United States v. Percheman*, 7 Pet., 51. *United States v. Rodman*, 15 Pet., 130.

His order of survey, made after the 24 January, 1819, was made void by the treaty. *Ibid.*

In 1781, the Spanish governor of Louisiana had no power to make a grant of lands in West Florida. *United States v. Power's Heirs*, 11 H., 570.

A complete unrecorded title was not barred as against the United States by any act of Congress, though barred as against one desiring title from the government. *Ibid.*

A title to lands in Florida, obtained from Indian tribes, and ratified by the local Spanish authorities, before the cession was confirmed. *Mitchel v. United States*, 9 Pet., 711. *United States v. Fernandez*, 10 Pet., 303.

A Spanish grant for lands in the possession of the Indians, passed the title of the crown subject only to the Indian title; such title is valid as against the United States. *United States v. Fernandez*, 10 Pet., 303.

Spanish grants made after the treaty of 1782, within the territory east of the Mississippi, and north of a line drawn from that river at the 31st degree of north latitude, east to the middle of the Apalachicola, are invalid. *Henderson v. Poindexter*, 12 Wh., 530. *United States v. Reynes*, 9 H., 127. *La Roche v. Jones*, Ibid., 155. *Robinson v. Minor*, 10 H., 627. *United States v. Philadelphia*, 11 H., 609.

No Spanish grant made while the country was wrongfully occupied by Spain can be valid, unless confirmed by some law of the United States. Ibid. S. P., *De La Croix v. Chamberlain*, 12 Wh., 599. *Pollard v. Files*, 2 H., 591. *Pollard v. Hagan*, 3 H., 212.

The act of 26 March, 1804, annulling Spanish grants of land between the Mississippi and Perdido, is valid. Ibid. *Garcia v. Lee*, 12 Pet., 511. *Keene v. Whitaker*, 14 Pet., 170. S. P., *United States v. Reynes*, 9 H., 127. *United States v. Philadelphia*, 11 H., 609. *Glenn v. United States*, 13 H., 250. *De Villemont's Heirs v. United States*. Ibid., 261. s. c., Hemp., 389.

A grant made before the 24 January, 1818, is valid, though the survey were not made until afterwards, provided it were made before the exchange of flags; and it is no objection to such a grant, that the metes and bounds were not set forth. *United States v. Acosta*, 1 H., 24.

Though the country west of the Perdido river was not acquired from Spain, as part of West Florida, yet incipient titles acquired from the Spanish authorities when confirmed by Congress, are valid. *Pollard v. Files*, 2 H., 591.

Under the treaty of 1819, the title to lands which had been granted by the king of Spain, was confirmed by force of the instrument itself. *United States v. Percheman*, 7 Pet., 51. *United States v. Clarke*, 9 Pet., 168. *Mitchel v. United States*, Ibid., 711. *Smith v. United States*, 10 Pet., 326. *United States v. Clarke's Heirs*, 16 Pet., 228. *Les Bois v. Bramell*, 4 H., 449.

A presumption arises from the grant itself, that the officer had authority to make it. Ibid. *Delassus v. United States*, 9 Pet., 117. *Mitchel v. United States*, Ibid., 711. *Strother v. Lucas*, 12 Pet., 410. *United States v. Peralta*, 19 H., 343.

The recital of a royal order in a Spanish grant, which does not authorize the grant, does not necessarily show that the grant was made without authority. *United States v. Clarke*, 8 Pet., 436. *Strother v. Lucas*, 12 Pet., 411. *United States v. Rodman*, 15 Pet., 130.

The treaty of 1819 provided for grants made by a governor, who had a general authority to grant lands, and his act is to be taken as not only *prima facie* valid, but as binding until disavowed, even if the crown had power to disavow it. Ibid.

Though perfect Spanish titles need no confirmation, yet titles granted on conditions not performed, and for the non-performance of which no excuse is shown, are void as against the government. *United States v. Wiggins*, 14 Pet., 334. *United States v. King*, 3 H., 773. S. C., 7 H., 833. *Bissell v. Penrose*, 8 H., 317. *United States v. Turner*, Ibid., 663. *Glenn v. United States*, 13 H., 250. s. c., Hemp., 394. *De Villemont's Heirs v. United States*, 13 H., 261. s. c., Hemp., 389. *Winter v. United States*, Ibid., 344.

A concession by the governor of East Florida in 1817, granting to the petitioners "license to construct a water saw mill on the creek

known by the name of P., bounded by the lands of S. H.; and this tract not being sufficient, I grant him the equivalent quantity in C. S., about a mile east of this mill, but with the precise condition that as long as he does not erect said machinery this grant shall be considered null, and without value or effect, until that event takes place; and then in order that he may not receive any prejudice from the expensive expenditures which he is preparing, he will have the faculty of using the pines and other trees comprehended in the square of five miles, or the equivalent thereof, which five miles are granted to him in the mentioned place, the avails of which he will enjoy without any defalcation whatever," was held to be a valid grant of land. *United States v. Richard*, 8 Pet., 470.

A concession on condition becomes absolute when the condition is performed. *United States v. Clarke*, 9 Pet., 168. S. P., *United States v. Sibbald*, 10 Pet., 313. *United States v. Kingsley*, 12 Pet., 476.

A grant on a condition precedent, not performed, and no excuse being shown for non-performance, is invalid against the United States. *United States v. Mill's Heirs*, 12 Pet., 215. *United States v. Kingsley*, *Ibid.*, 476. *United States v. Drummond*, 13 Pet., 84. *United States v. Burgevin*, *Ibid.*, 85. *United States v. Wiggins*, 14 Pet., 334. *Buyck v. United States*, 15 Pet., 215. *O'Hara v. United States*, *Ibid.*, 275. *United States v. Boisdoré*, 11 H., 63.

A Spanish permit to form an establishment in the Mississippi, followed by possession and improvements, entitled the occupant to 640 acres, including his improvements; though the Indian title was not then extinguished. *Marsh v. Brooks*, 14 H., 514.

Though a grant declare that it was made in conformity with a royal order, yet if it also show that it had other considerations, and in fact was not founded on such order, it is not invalid, because the quantity granted was in excess of what the royal order permitted. *United States v. Rodman*, 15 Pet., 130.

A recital in a Spanish grant of one of its considerations will not be deemed a condition, if not declared to be so, and the grant be in terms absolute. *Ibid.*

If a concession by the governor of East Florida did not ascertain the particular land granted, so that it could be severed from the public domain, by a survey pursuant to its calls, and the only survey made by the grantee, under the Spanish authorities, was of land not granted, the grantee has no title as against the United States. *United States v. Forbes*, 15 Pet., 173. S. P., *Buyck v. United States*, *Ibid.*, 215. *O'Hara v. United States*, *Ibid.*, 275. *United States v. Delespine*, *Ibid.*, 319. *United States v. Miranda*, 16 Pet., 153. *Bissell v. Penrose*, 8 H., 317. *Villalobos v. United States*, 10 H., 541.

A Spanish grant, which did not contain any description by which the land could be located, and was connected with no survey, did not create a private property in any part of the public domain. *United States v. King*, 3 H., 773. *United States v. Lawton*, 5 H., 10. *United States v. Boisdoré*, 11 H., 63. *Lecompte v. United States*, *Ibid.*, 115.

Where a petition for a Spanish concession was for a tract without defined boundaries, which was referred to the solicitor general, with instructions to put the petitioner in possession if no prejudice would thereby result to third persons, such grant was not absolute without subsequent action by the government. *Lecompte v. United States*, 11 H., 115.

There was no ordinance engrafting a condition upon a mill grant. *United States v. Hauson*, 16 Pet., 196.

The return of a private surveyor, employed as the agent of the grantee, is not presumed to be correct; it is a mere private paper, and is not evidence. *Ibid*.

The survey not conforming in part to the grant, the claim was as to such part disallowed. *United States v. Levi*, 8 Pet., 479 S. P., *United States v. Huertas*, 9 Pet., 171. *United States v. Forbes*, 15 Pet., 173. *Villalobos v. United States*, 10 H., 541.

Where the survey was not conformable to the grant, a new survey was ordered. *United States v. Segni*, 10 Pet., 306 *United States v. Seton*, *Ibid*, 309. *United States v. Sibbald*, *Ibid*, 313. *United States v. Breward*, 16 Pet., 143.

A survey by the surveyor general of Florida, made after 24th of January, 1818, at a different place from that called for by the grant, is inoperative. *United States v. Breward*, 16 Pet., 143.

But if the grant sufficiently described the land to enable a surveyor to run the lines, it is valid, and a survey will be directed. *Ibid*. S. P., *United States v. Low*, 16 Pet., 162.

The certificate of a survey, by the surveyor general of the Spanish province of Florida, is to be taken as *prima facie* correct. *Ibid*. *United States v. Low*, 16 Pet., 162. *United States v. Hauson*, *Ibid*, 196.

A survey of a Spanish concession, made by a surveyor, and approved by the surveyor general, is binding, both on the United States and the grantee, but not on third persons. *Menard's Heirs v. Massey*, 8 H., 293

The surveyor general of Florida, under the Spanish government, had no authority to change the location of a grant, or to split up the surveys; he was bound to make the surveys in reasonable conformity with the grant. *Villalobos v. United States*, 10 H., 541.

The Spanish grant to Arredondo, for land at Alachua in Florida, gave a valid title under the treaty of 1819, the laws of nations, of the United States, and of Spain. *United States v. Arredondo*, 6 Pet., 691. S. P., *New Orleans v. De Armas*, 9 Pet., 223. *United States v. Kingsley*, 12 Pet., 476.

The contracts between the Spanish government and the Marquis de Maison Rouge did not amount to a perfect grant. *United States v. King*, 7 H., 833. *United States v. Coxe*, 17 H., 41.

The grant of lands in Florida by the king of Spain to the duke of Alagon was annulled by the treaty of 1819. *Clark v. Braden*, 16 H., 635.

The title of Dubuque, under a grant from the Fox Indians, confirmed by the Spanish governor of Louisiana, was merely a permit to work mines, and occupy for that purpose the needful land. *Chouteau v. Molony*, 16 H., 203.

Grants by the military commander of the Spanish post at Nacogdoches, for the purpose of grazing, fitted and used for that object, and having defined limits, conferred an inchoate title. *United States v. Davenport's Heirs*, 15 H., 1.

Concessions of land made by governors of East Florida, confirmed. *United States v. Huertas*, 8 Pet., 475. *United States v. Gomez*, *Ibid*., 477. *United States v. Fleming's Heirs*, *Ibid*., 478. *United States v. Younge*, *Ibid*., 484. *United States v. Hernandez*, *Ibid*., 485. *United States v. Huertas*, *Ibid*., 488. *United States v. Fatio's Heirs*, *Ibid*.,

492. *United States v. Gibson*, Ibid., 494. *United States v. Clarke*, 9 Pet., 168. *United States v. Huertas*, Ibid., 171. *Mitchel v. United States*, Ibid., 711. *United States v. Fernandez*, 10 Pet. 303. *United States v. Segni*, Ibid., 306. *United States v. Chaires*, Ibid., 308. *United States v. Seton*, Ibid., 309. *United States v. Sibbald*, Ibid., 313. *United States v. Levy*, 13 Pet., 81. *United States v. Arredondo's Heirs*, Ibid., 88. *United States v. Waterman's Heirs*, 14 Pet., 478. *United States v. Rodman*, 15 Pet., 130. *United States v. Delespine*, Ibid., 226. *United States v. Clarke's Heirs*, 16 Pet., 228.

A Spanish grant gave but an incipient right, which, when surveyed, required confirmation by the governor. *United States v. Hauson*, 16 Pet., 196. *Les Bois v. Bramell*, 4 H., 449. *Bissell v. Penrose*, 8 H., 317. *Glenn v. United States*, 13 H., 250. s. c., *Hemp*, 394. *De Villemont's Heirs v. United States*, Ibid., 261. s. c., *Hemp*, 389.

By the laws of Spain and the regulations of the province of Louisiana, the survey of an open concession was necessary to give it locality, and perfect the title of the grantees. *Winter v. United States*, *Hemp*, 344. *De Villemont v. United States*, Ibid., 389. S. C., 13 H., 261. *Glenn v. United States*, *Hemp*, 394. s. c., 13 H., 250.

What amounted to a survey, according to the laws of Spain. Ibid.

The action of the Spanish governor, in his judicial capacity, upon a grant of land, did not amount to a confirmation of it in his political capacity. *United States v. Ducros*, 15 H., 38.

An inchoate Spanish title in Missouri was assignable and consequently subject to be mortgaged; and a confirmation of it enured to the benefit of claimants under the mortgage. *Massey v. Papin*, 24 H., 362.

An assignee could claim under a Spanish concession, and obtain a confirmation in the name of the original owner of the Spanish title, and when confirmed, the title enured to the assignee. *Bissell v. Penrose*, 8 H., 317.

An incomplete Spanish title, confirmed by Congress, will not prevail against a patent for the same land issued prior to such confirmation. *Menard's Heirs v. Massey*, 8 H., 293.

In confirming a Spanish title, the courts have no power to designate a new location, varying from the original concession. *United States v. Levy*, 13 Pet., 81. *United States v. Arredondo's Heirs*, Ibid., 133. *United States v. Forbes*, 15 Pet., 173.

A paper writing, making a grant by a royal officer of Spain, in Florida, addressed to a public officer, whose duty it was to keep the original, and issue a copy, need not be produced; the copy issued is deemed an original. *United States v. Percheman*, 7 Pet., 51. *United States v. Wiggins*, 14 Pet., 334. *United States v. Rodman*, 15 Pet., 130. *United States v. Delespine*, Ibid., 226.

The authenticity of a document having been sanctioned by a Spanish tribunal, which acted on it, in making a title, it is too late to question its genuineness, as respects that title. *United States v. Delespine*, 15 Pet., 319.

Though a document purporting to be a return of a Spanish survey have been recognized by the colonial authorities as genuine, and is, therefore, to be deemed so, *prima facie*, yet it may be shown to be forged and antedated. *United States v. King*, 3 H., 773.

A paper extracted from a Spanish register of land-titles in Louisiana,

which contains only the recitals which usually preceded a formal grant, is not evidence of title. *United States v. Le Blanc*, 12 H., 435.

A Spanish grant of land, lying between the Mississippi and Perdido rivers, made subsequently to the treaty of St. Ildefonso, in 1801, was invalid; by that treaty, the disputed territory was ceded to France, and Spain ceased to have any title thereto. *United States v. Lynde*, 11 Wall., 632.

Such grants were not confirmed by the treaty of 1819, ceding the Floridas to the United States. *Ibid.*

But they were confirmed by the act 22 June, 1860. (2 Bright. Dig., 401.) *Ibid.*

MEXICAN TITLES.

The United States, by the act of 1851, declared the conditions under which they would discharge their political obligations to Mexican grantees. *Beard v. Federy*, 3 Wall., 479.

The treaty of Guadalupe Hidalgo protects the property held by towns under the Mexican government, as well as that of individuals. *Townsend v. Greeley*, 5 Wall., 326.

The power of the Mexican government to grant lands in California did not cease until the actual conquest of the country. *Palmer v. United States*, Hoff. L. Cas., 249.

The authority and jurisdiction of Mexican officers to make grants of land expired on the 7th July, 1846. *United States v. Yorba*, 1 Wall., 412. See *United States v. Workman*, *Ibid.*, 745. *United States v. Jones*, *Ibid.*, 765.

Mexican grants or concessions are of three kinds. 1. Grants by specific boundaries, where the donee is entitled to the entire tract described. 2. Grants by quantity, within a larger tract, where the donee is entitled to that quantity and no more. 3. Grants of a certain rancho by name, where the donee is entitled to the tract by boundaries if given, or if not, according to the limits of his possession and settlement. *Higuera v. United States*, 5 Wall., 827.

Ordinary grants and those for meritorious services are governed by the same principles. *Teschemacher v. United States*, Hoff. L. Cas., 28.

By the laws of Mexico, an Indian was capable of receiving a grant of land and holding it, with the same rights as a white person. *United States v. Ritchie*, 17 H., 525.

Upon the secularization of the mission lands, in 1833 and 1834, they became subject to grant in the same manner as other parts of the public domain. *Ibid.* *United States v. Cervantes*, 18 H., 553. s. c., 3 Am. L. R., 745. Hoff., L. Cas., 9.

The title to the mission lands in California was never vested in the church, which had only an usufruct in them. *United States v. Cervantes*, 18 H., 553. s. c., 3 Am. L. R., 745. Hoff., L. Cas., 9.

The governor had no power to grant the orchards and like property of the missions. *Larkin v. United States*, Hoff., L. Cas., 313.

A grant by the Mexican governor of California, of ten square leagues of land, within a specific district of country, in consideration of meritorious services, conferred an equitable right to so much land within that district, valid as against the Mexican government, and consequently as against the United States, though the particular tract had not been designated by a survey at the time of the

cession. *Fremont v. United States*, 17 H., 542. s. c., Hoff. L. Cas., 20. *United States v. Larkin*, 18 H., 558. s. c., Hoff. L. Cas., 41. *United States v. Armijo*, 5 Wall., 444. s. c., Hoff. L. Cas., 248. *Semple v. United States*, Ibid., 37. *Yount v. United States*, Ibid., 43. *United States v. Soto*, Ibid., 68. *United States v. Pacheco*, Ibid., 113. *Pico v. United States*, Ibid., 116. *United States v. Weber*, Ibid., 126. *Chabolla v. United States*, Ibid., 130. *Pico v. United States*, Ibid., 142. *Nunez v. United States*, Ibid., 191.

The particular land to which such title is to attach must be ascertained by a survey, made under the authority and in the mode provided by the laws of the United States. Ibid.

Although the title did not become perfect until approved by the departmental assembly, yet an immediate interest passed by the grant; it was the governor's duty to have submitted the case to the departmental assembly, and if they had rejected it, then to have laid the same before the supreme government of the republic. *United States v. Reading*, 18 H., 1. s. c., Hoff. L. Cas., 18. *United States v. Cervantes*, 18 H., 553. s. c., 3 Am. L. R., 745. Hoff. L. Cas., 9. *United States v. Larkin*, 18 H., 557. s. c., Hoff. L. Cas., 41. See *United States v. Castellero*, 23 H., 464. *Beard v. Federy*, 3 Wall., 479.

If, when submitted, a committee reported in favor of the grant, but no final action appeared to have been taken, the grantee should have the presumption of a decision in his favor. *United States v. Cervantes*, 18 H., 553. s. c., 3 Am. L. R., 745. Hoff. L. Cas., 9.

The want of approval of a grant by the departmental assembly, does not affect its validity. *United States v. Johnson*, 1 Wall., 326.

By the Mexican law, a formal delivery of possession, after the execution of the grant, was essential for the investiture of the title. *Graham v. United States*, 4 Wall., 259.

How such delivery of juridical possession was given. Ibid.

The record of such proceeding controls the action of the United States surveying officers, when the grant is confirmed. Ibid.

Where a doubt arises upon the meaning of a grant, as to the quantity ceded, reference may be had to the juridical possession delivered to the grantee. *United States v. Pico*, 5 Wall., 536.

The non-performance of a condition subsequent, the performance of which the disturbed condition of the country rendered impossible, did not avoid the grant. *United States v. Reading*, 18 H. 1. s. c., Hoff. L. Cas., 18. *United States v. Vaca*, 18 H., 556. See *Fuentes v. United States*, 22 H., 443.

A condition annexed to the grant inconsistent with the public policy of the United States, was annulled by the conquest. Ibid.

The absence of the usual conditions in a colonization grant, requiring cultivation and inhabitancy, etc., does not impair its validity. *United States v. Yorba*, 1 Wall., 412.

The Mexican law of 1824 prohibits the union in one hand, as property, of more than one league of irrigable land, four leagues of farming land, and six for stock raising. *United States v. Hartnell*, 22 H., 286. s. c., Hoff. L. Cas., 207.

This was held by the departmental assembly to prohibit the grant of five leagues in Lower California, and of eleven leagues in Upper California, to the same person. Ibid.

The concurrence of the departmental assembly was necessary to per-

fect the grants, and they having reduced the one in Upper California to five leagues, no more can be claimed from the United States. *Ibid.*

Where neither the petition nor the patent stated the quantity of land granted, but the concession and direction by the governor to the proper officer to issue the patent limited the quantity to eleven square leagues, this concession and direction constitute a part of the evidence of title, and are sufficient to make the grant good for that amount. *United States v. Larkin*, 18 H., 557. s. o., Hoff. L. Cas., 41.

The petition being accompanied by a map, giving the location and boundaries of the tract, and the patent referring to this map, the land can be located by it. *Ibid. United States v. Sutherland*, 19 H., 363. *United States v. Pacheco*, Hoff. L. Cas., 150.

No question having been raised in the court below, as to the grant being a fraudulent one, it cannot be questioned, on that ground, in the Supreme Court. *Ibid. See United States v. Cambuston*, 20 H., 59. s. o., Hoff. L. Cas., 86.

Neither the act of the Mexican Congress of 1824, nor the regulations of 1828, prescribe any particular form of grants or patents of the public lands. *Ibid.*

Where three of the boundaries of a grant are accurately defined, but the fourth is left undetermined, the quantity of land granted will fix its location. *United States v. Fossat*, 20 H., 413. s. o., Hoff. L. Cas., 211, 376.

Where the surplus remaining of a particular tract was granted, "the extent of which is about five leagues, more or less," the words were held not to be a limitation, but a mere estimate of the extent of such surplus. *United States v. D'Aguirre*, 1 Wall., 311. S. P., *United States v. Pico*, 5 Wall., 536.

The words "a little more or less" in a Mexican grant are operative to pass to the grantee such fractional part of a league as may be found in excess of the quantity named in the grant. *United States v. Estudillo*, Hoff. L. Cas., 204. *United States v. Fossat*, *Ibid.*, 211. S. P., *Ibid.*, 376.

Where two grants were made for specific quantities, without designation of location, except that they were within the same general boundaries, which included a much larger quantity of land, a prior location and settlement by the grantee, under a provisional license, was held to give a superior equity in the location of his grant. *United States v. Armijo*, 5 Wall., 444. S. P., Hoff. L. Cas., 248.

An order from the governor allowing the claimant to search for land in California, followed by a petition for a grant, its reference to the alcalde, and his report that the land did not belong to any private individual, conferred no vested interest in the claimant which was binding on the government. *United States v. Garcia*, 22 H., 274. s. o., Hoff. L. Cas., 157.

Where a grantee under the colonization law suffered eleven years to elapse without taking any step towards the completion of his title or the fulfillment of the obligations imposed, and there was no *expediente* in the archives to show the segregation of the land from the public domain, nor any delivery of possession or other assertion of right, he will be deemed to have abandoned the grant prior to the date of the treaty of cession. *United States v. Noe*, 23 H., 312. s. o., Hoff. L. Cas., 162.

Where the claimant under a Mexican grant has only an equitable

title, the petition and concession must be taken together, to fix the amount of land granted. *Yontz v. United States*, 23 H., 495.

The decree of 1824, and the regulations of 1828, forbade the colonization of territory comprehended within 20 leagues of the boundaries of any foreign state, and within 10 leagues of the sea-coast, without the consent of the supreme executive power. *Arguello v. United States*, 18 H., 539. *United States v. Cervantes*, *Ibid.*, 553. s. c., 3, Am. L. R., 745. Hoff., L. Cas. 9.

But this restriction only embraced grants to empresarios, who intended to introduce large colonies of foreigners; it did not prohibit grants within those limits to native citizens. *Ibid.*

The consent of the federal executive of Mexico was essential to the validity of a grant of lands within ten leagues of the coast. *League v. Egery*, 24 H., 264. *Footte v. Egery*, *Ibid.*, 267.

The law of 1824 and the regulations of 1828, were the only Mexican laws on the subject of granting lands in the territories (except those regulating towns and missions), and the authority of the governors and other officers is defined by them. *United States v. Vallejo*, 1 Bl., 541. *United States v. Castellero*, 2 Bl., 17.

It was the usage of the Mexican government in California to set apart for the use of the Indians, small lots of land appurtenant to the houses in which they resided around the missions, and a claim to such lot may be confirmed, on proof of possession for a long period, in the grantee and his assigns. *United States v. Wilson*, 1 Bl., 267.

The ordinances made and established by the King of Spain in 1783, prescribe the mode of acquiring title to mines, and were in force in Mexico at the date of the American conquest of California. *United States v. Castellero*, 2 Bl., 18.

A strict compliance with the terms and conditions of those ordinances was required to vest a title to a mine. *Ibid.*

Registry is the basis of title to a mine, and no mine could be lawfully worked until registered. *Ibid.*

Title to a mine vested by the decree of the proper tribunal, in a case duly presented for decision, and by the registry of the adjudication, together with the proceedings on which it was founded. *Ibid.*

The supreme government of Mexico reserved to itself the power over its mines, and withheld all jurisdiction of that nature from the local authorities. *Ibid.*

The jurisdiction of the governor under the colonization laws extended only so far as to make grants of public lands; he could not grant a mine as private property. *Ibid.*

By the laws of Mexico, the property of pueblos or towns was held, not absolutely, but in trust for the benefit of the inhabitants; municipal bodies erected since the conquest succeeded to the possession of such property. *Townsend v. Greeley*, 5 Wall., 326.

A pueblo or town once formed and recognized, became entitled to the use of certain lands, for the benefit of its inhabitants, which were upon petition set apart and assigned to it, and no other evidence of title was required; the disposition of such lands was, at all times, subject to the control of the government. *United States v. Pico*, 5 Wall., 536.

In construing grants of land in California, by the Spanish and Mexican authorities, the state of the country and the policy of the government are to be taken into consideration. *United States v. Sutherland*, 19 H., 364.

A complete *expediente*, according to the laws and customs of Mexico, consists of a petition with *deseño* annexed, order of reference, decree of concession and copy of the grant. *United States v. Knight*, 1 Bl., 227.

As a general rule, to support a Mexican title to land in California, the written evidence of the grant, in the forms required by law, must be found in the public archives and records. *United States v. Castro*, 24 H., 346. *United States v. Knight*, 1 Bl., 227. *United States v. Neleigh*, Ibid., 298. *United States v. Vallejo*, Ibid., 541. *White v. United States*, 1 Wall., 660. *Romero v. United States*, Ibid., 721 s. c. Hoff., L. Cas., 219. *Pico v. United States* 2 Wall., 279. *Peralta v. United States*, 3 Wall., 434. *United States v. Gomez*, Ibid., 752.

To support such title by secondary evidence, the claimant must show the existence of the record, and its loss or destruction, and that he entered into possession under the grant. Ibid. *Pico v. United States*, 2 Wall., 279. *Peralta v. United States*, 3 Wall., 434. *United States v. Polack*, Hoff. L. Cas., 284.

Jimeno's Index is not an authoritative proof of grants therein enumerated, or a conclusive exclusion of grants not so registered; but it may be referred to as evidence. Ibid. See *Romero v. United States*, 1 Wall., 721.

A presumption arises from the *expediente* and definitive title, that the grantee was a Mexican citizen, and as such entitled to hold land. *Dalton v. United States*, 22 H., 436.

A recital in the grant itself, that the legal prerequisites had been complied with, is not sufficient ground for a presumption that they had been observed, the records having been destroyed. *Fuentes v. United States*, 22 H., 443. *Den v. Hill*, 1 McA., 480.

A genuine grant is not vitiated, by a fraudulent attempt to alter it by erasures and interlineations, for the purpose of enlarging the quantity, made after the cession of California. *United States v. West*, 22 H., 315.

If a grant after delivery be altered as to the quantity of land granted, by direction of the grantor, and then re-delivered, this is in effect a re execution of the grant. *Malarin v. United States*, 1 Wall., 282.

The right of a pueblo or town to an assignment of lands for the benefit of its inhabitants, was an imperfect one, until such lands were definitely assigned; and afterwards, the use and disposition of them were subject to the control of the government. *Grisar v. McDowell*, 6 Wall., 363.

In the execution of the treaty obligations with respect to property claimed under the Mexican laws, the government may, if it please, act by legislation directly upon a claim preferred. Ibid.

The authority of the Mexican governors to make alienations of the public domain, within the limits of California, ceased on the 7th July, 1846. *Stearns v. United States*, 6 Wall., 589. And see *Hornsby v. United States*, 10 Ibid., 224.

A grant of land in California, purporting to have been made by Governor Pio Pico, on the 2d May, 1846, held to be invalid. *Roland v. United States*, 7 Wall., 743. See *Hornsby v. United States*, 10 Ibid., 224.

Where a Mexican grant designates the land granted by a particular name, and specifies the quantity, but not the boundaries, the grantee is

entitled to the quantity specified, within the limits of his settlement and possession, if that amount can be obtained without encroachment on the prior rights of adjoining proprietors. *Alviso v. United States*, 8 Wall., 337. *Hornsby v. United States*, 10 Ibid., 224.

The Commissioner can not properly grant a patent, under the 7th section of the act 23 July, 1866, (2 Bright. Dig., 105,) unless the purchaser bring himself, by affirmative proofs, within the words of the law. *The Secretary v. McGarrahan*, 9 Wall., 298.

The alcalde was the chief executive officer of the pueblo of San Francisco, and as such, had authority to make grants of the pueblo lands, subject to the authority lodged in the ayuntamiento, and still higher authority of the departmental governor and assembly. *Merryman v. Bourne*, 9 Wall., 592.

The ordinance of the common council of San Francisco, known as the Van Ness ordinance, gave to the parties holding alcalde grants, within certain defined limits in that city, where the grants had been recorded in the proper books, deposited with the recorder of the county of San Francisco, on or before 3 April, 1850, a new title, upon which an action would lie, if the grants were by themselves ineffectual to pass the title. Ibid.

The act of Congress of 1 July, 1864, was a confirmation of the title held under the Van Ness ordinance, and took effect, by relation, as of the time when the act of the State Legislature, confirming the ordinance, was passed. Ibid.

A grant, coupled with a decree that all places ceded for ranches, in that jurisdiction, should remain as provisional grants, until the common lands of the city should be regulated, was not absolute, if the tract fell within the limits of the town-land, when ascertained. *United States v. Rocha*, 9 Wall., 639.

A Mexican grant of land, by quantity, in a designated locality, passed to the grantee the quantity of land specified, to be afterwards laid off by official authority; this measurement and segregation from the public domain could only be made by the officers of the government. *Hornsby v. United States*, 10 Wall., 224.

Although a general possession of the land ceded was permitted before the official measurement, the grantee acquired thereby no absolute right to the land occupied, which would control the action of the officers of the government in the segregation of the land. Ibid.

Although the regulations of 1828 provided that a map of the land solicited should accompany the petition for a grant, this was not exacted in all cases; the governors exercised a discretionary power of dispensing with it, under special circumstances. Ibid.

Although the regulations required the governor, upon receiving a petition for land, to obtain the necessary information as to the qualifications of the petitioner and the character of the land, yet a formal reference to the local authorities was not requisite; the governor might act on his own investigations, or otherwise. Ibid.

A clause in the grant, subjecting it to the approval of the departmental assembly, did not prevent the title from passing to the grantee; but until such approval, he was in by a defeasible title. It was the duty of the governor, not of the grantee, to submit the grant to the assembly for its approbation. Ibid.

A grant of the surplus land remaining in two places, after satisfying two prior grants to other parties, with a condition that the grantee

should solicit the proper judge to give him judicial possession, was not forfeited, under the Mexican law, by a failure to comply with the condition, but only left the land open to denouncement by other parties. *Ibid.*

Some formal and regular proceedings were required to effect a divestiture of the grantee's interest, and these had their inception in a denouncement by a party desirous of obtaining the land; an inquisition then followed, as to whether or not the condition had been complied with, or so disregarded as to justify a decree of forfeiture. *Ibid.*

An instrument reciting the purchase of a tract of land from the original grantee, and granting and transferring all the party's right therein to another, "who shall make such use thereof as may be most convenient to him," operated, under the law of Mexico, as a conveyance of the title. *Steinbach v. Stewart*, 11 Wall., 566.

A Mexican grant of land made after the conquest of California, is utterly void. *Alexander v. Roulet*, 13 Wall., 386.

The departmental assemblies had no power to alien the public domain, except for purposes of settlement or cultivation; the right to dispose of it for other purposes rested with the supreme government alone. *United States v. Vigil*, 13 Wall., 449.

A Mexican grant which does not identify the precise tract granted, either by description or by reference, is an imperfect title, which needs the further action of the government of the United States to confirm it. *Carpentier v. Montgomery*, 13 Wall., 480.

An alcalde of the pueblo of San Francisco, in 1846, had no authority to revoke a grant once made by him and delivered; a mutilation of the record could not divest the title of the grantee. *Montgomery v. Bevans*, 1 Saw., 653.

A grant to a person deceased was void. *Ibid.*

In the following cases, Mexican titles were held to be valid on the evidence: *U. S. v. Sutter*, 21 H., 170. *Gonzales v. U. S.*, 22 H., 161. *U. S. v. Pacheco*, *Ibid.*, 225. *U. S. v. De Haro*, *Ibid.*, 293. *U. S. v. Alviso*, 23 H., 318. *U. S. v. Castellero*, *Ibid.*, 464. *U. S. v. Berreyesa*, *Ibid.*, 499. *U. S. v. Vallejo*, 1 Bl., 283. *U. S. v. Moreno*, 1 Wall., 400. *U. S. v. Yorba*, *Ibid.*, 412. *Rodriguez v. U. S.*, *Ibid.*, 582. *U. S. v. Yount*, Hoff. L. Cas., 49. *U. S. v. Bernal*, *Ibid.*, 50. *Mesa v. U. S.*, *Ibid.*, 66. *Feliz v. U. S.*, *Ibid.*, 69. *U. S. v. Greer*, *Ibid.*, 72. *Castro v. U. S.*, *Ibid.*, 72. *U. S. v. Sunal*, *Ibid.*, 74. *U. S. v. Reid*, *Ibid.*, 74. *U. S. v. Larkin*, *Ibid.*, 75. *U. S. v. Amador*, *Ibid.*, 76. *U. S. v. Murphy*, *Ibid.*, 77. *U. S. v. Horrell*, *Ibid.*, 78. *U. S. v. Pacheco*, *Ibid.*, 79. *U. S. v. Thompson*, *Ibid.*, 79. *U. S. v. Page*, *Ibid.*, 80. *U. S. v. Murphy*, *Ibid.*, 81. *U. S. v. Thomas*, *Ibid.*, 82. *U. S. v. Rodriguez*, *Ibid.*, 82. *U. S. v. Thomas*, *Ibid.*, 83. *U. S. v. Wilson*, *Ibid.*, 84. *Brackett v. U. S.*, *Ibid.*, 85. *U. S. v. Cambuston*, *Ibid.*, 86. *Dana v. U. S.*, *Ibid.*, 87. *U. S. v. Peralta*, *Ibid.*, 89. *U. S. v. Cazares*, *Ibid.*, 90. *U. S. v. Bale*, *Ibid.*, 92. *U. S. v. Guerrero*, *Ibid.*, 94. *U. S. v. Carrillo*, *Ibid.*, 96. *U. S. v. Palomares*, *Ibid.*, 97. *De Zaldo v. U. S.*, *Ibid.*, 98. *U. S. v. Berreyesa*, *Ibid.*, 99. *U. S. v. Bernal*, *Ibid.*, 99. *U. S. v. Cooper*, *Ibid.*, 101. *U. S. v. Moraga*, *Ibid.*, 103. *U. S. v. Castro*, *Ibid.*, 105. *Grimes v. U. S.*, *Ibid.*, 107. *U. S. v. Boggs*, *Ibid.*, 109. *U. S. v. Sunol*, *Ibid.*, 110. *U. S. v. Briones*, *Ibid.*, 111. *U. S. v. Leese*, *Ibid.*, 124. *U. S. v. Castro*, *Ibid.*, 125. *U. S. v. Reid*, *Ibid.*, 129. *U. S. v. Ortega*, *Ibid.*, 135. *U. S. v. Grimes*, *Ibid.*, 137. *U. S. v. Payson*, *Ibid.*, 138. *U. S. v. Bernal*, *Ibid.*, 139. *U. S. v. Pope*, *Ibid.*, 141. *Martin v. U. S.*, *Ibid.*,

146. *U. S. v. Stevenson*, Ibid., 156. *U. S. v. Rico*, Ibid., 161. *U. S. v. Rodriguez*, Ibid., 170. *U. S. v. Sheldon*, Ibid., 171. *U. S. v. Pico*, Ibid., 172. *McKee v. U. S.*, Ibid., 173. *Vallejo v. U. S.*, Ibid., 174. *Rodriguez v. U. S.*, Ibid., 175. *U. S. v. Alvisa*, Ibid., 176. *U. S. v. Soto*, Ibid., 177. *U. S. v. Soto*, Ibid., 182.

The following were held to be invalid claims to Mexican grants: *U. S. v. Sutter*, 21 H., 171. *U. S. v. Nye*, Ibid., 408. *U. S. v. Bassett*, Ibid., 412. s. c., Hoff. L. Cas., 112. *U. S. v. Galbraith*, 22 H., 89. *U. S. v. Feschmaker*, Ibid., 392. s. c., Hoff. L. Cas., 28. *U. S. v. Pico*, 22 H., 406. s. c., Hoff. L. Cas., 188. *U. S. v. Vallejo*, 22 H., 416. s. c., Hoff. L. Cas., 174. *Fuentes v. U. S.*, 22 H., 443. *U. S. v. Ben- nitz*, 23 H., 255. s. c., Hoff. L. Cas., 104. *U. S. v. Rose*, 23 H., 262. s. c., Hoff. L. Cas., 197. *U. S. v. Osio*, 23 H., 273. s. c., Hoff. L. Cas., 100. *U. S. v. Pico*, 23 H., 321. s. c., Hoff. L. Cas., 279. *U. S. v. Bolton*, 23 H., 341. *U. S. v. Murphy*, Ibid., 476. s. c., Hoff. L. Cas., 154. *Luco v. U. S.*, 23 H., 515. s. c., Hoff. L. Cas., 345. *Palmer v. U. S.*, 24 H., 125. s. c., Hoff. L. Cas., 216. *U. S. v. Chana*, 24 H., 131. s. c., Hoff. L. Cas., 155. *U. S. v. Castro*, 24 H., 346. *U. S. v. Hensley*, 1 Bl., 35. *U. S. v. Knight*, Ibid., 227. *U. S. v. Neleigh*, Ibid., 298. *U. S. v. Vallejo*, Ibid., 541. *U. S. v. Castellero*, 2 Bl., 17. *U. S. v. Galbraith*, Ibid., 394. *U. S. v. Chaboya*, Ibid., 593. *White v. U. S.*, 1 Wall., 660. *U. S. v. Workman*, Ibid., 754. *U. S. v. Jones*, Ibid., 766. *Swat v. U. S.*, Hoff. L. Cas., 231. *Palmer v. U. S.*, Ibid., 249. *Redman v. U. S.*, Ibid., 305. *Larkin v. U. S.*, Ibid., 313. *Little v. U. S.*, Ibid., 325. *U. S. v. Limantour*, Ibid., 389.

TITLE VII.—TIMBER CULTURE AND DEPREDACTIONS.

No. 512.

INSTRUCTIONS

Under the act of March 3, 1873.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., April 21, 1873.

REGISTERS AND RECEIVERS OF UNITED STATES LAND OFFICES.

GENTLEMEN:—Your attention is called to the annexed act of Congress, entitled "An act to encourage the growth of timber on western prairies," approved March 3, 1873. (Part II., No. 92.) * * *

(The instructions of this date were superseded by the instructions of Oct 30, 1873, No. 513, with which they were identical, except as follows:)

In the States and Territories in which fifty per centum additional is allowed by the sixth section of the act of March 21, 1864, the additional allowance will apply to the fee and commissions herein named.

* * * * *

The fees and commissions upon entries under the first section of the timber-culture act of March 3, 1873, payable at date of entry, will be:

On 160 acres, at \$1.25, fee \$10; commissions \$8. (\$4.00 see No. 513.)

On 160 acres, at \$2.50, fee \$10; commissions \$16. (\$8.00 see No. 513.)

In the following States and Territories, viz: California, Nevada, Oregon, Colorado, New Mexico, Washington, Arizona, Idaho, Utah, Wyoming, and Montana, the fees and commissions will be:

On 160 acres, at \$1.25, fee \$10; commissions \$12.

On 160 acres, at \$2.50, fee \$10; commissions \$24.

No. 513.

INSTRUCTIONS

Under the act of March 3, 1873.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 30, 1873.

REGISTERS AND RECEIVERS OF UNITED STATES LAND-OFFICES.

GENTLEMEN:—Your attention is called to the annexed act of Congress, entitled "An act to encourage the growth of timber on western prairies," approved March 3, 1873. (Part II., No. 92.)

This act provides:

First. That any person who shall plant, and for a continuous period of ten years shall protect and keep in a healthy growing condition, forty acres of timber (the trees thereon being not more than twelve feet apart each way) on any quarter-section of any of the public lands of the United States that are prairie lands, or naturally devoid of timber, shall

be entitled to a patent for the whole of said quarter-section at the expiration of the said ten years, on making proof of such facts by not less than two credible witnesses: *Provided*, That only one quarter of any one section shall be thus granted.

Second. That a party applying to enter lands under the first section of this act shall make affidavit before the Register or Receiver of the proper land-office that the said entry is made for the cultivation of timber, and on filing such affidavit with the said Register and Receiver, and on payment of ten dollars fee and the prescribed commissions, the said party shall thereupon be permitted to enter the quantity of land hereinbefore specified: *Provided*, That no certificate shall be given, or patent issue therefor, until the expiration of at least ten years from the date of such entry; and if at the expiration of such time, or at any time within three years thereafter, the party making such entry, or, if he be dead, his heirs or legal representatives, shall make proof by two credible witnesses of the fact of such cultivation for the period aforesaid, he or they shall receive a patent for the said land.

Third. That if at any time after the filing of said affidavit, and prior to the issuing of patent for the said land, it shall be proven, after the manner of contests in homestead cases, that any person who may have made an entry of land under the first section of this act has abandoned, or failed to cultivate, protect, and keep in good condition such timber, then, and in that event, the said land shall revert to the United States.

Fourth. That any person who may have made a homestead entry of a tract of land of the character contemplated by this act, and who at the end of the third year of his or her residence thereon shall have had under cultivation for two years one acre of timber, planted, cultivated, etc., in the manner designated by the first section of the said act, for each and every sixteen acres of the said homestead, such person shall, upon due proof of said fact by two credible witnesses, receive his or her patent for the said homestead.

Fifth. That no lands acquired under the provisions of this act shall, in any event, become liable to the satisfaction of any debt or debts contracted prior to the issuing of patent therefor.

The sixth section authorizes the Commissioner of the General Land-Office to prepare and issue such rules and regulations, consistent with this act, as shall be necessary and proper to carry its provisions into effect.

The seventh section applies the fifth section of the act of March 3, 1857, entitled "An act in addition to an act to punish crimes against the United States, and for other purposes," to all oaths, affirmations, and affidavits required or authorized by this act.

When applications shall be made in the accompanying form A, to enter a tract of land under the provisions of the *first section* of this act, I have to direct:—

First. That, pursuant to the terms of the law, you will require such entry to be confined to the N. E. $\frac{1}{4}$, the N. W. $\frac{1}{4}$, the S. E. $\frac{1}{4}$, or the S. W. $\frac{1}{4}$, of a given section, or, in other words, to a *technical quarter-section* of public land.

You will then assure yourselves, by reference to the plat and tract books of your office, that no previous entry has been made under this act of any other quarter of the section described in the party's application.

You will next require the affidavit, form B, and on payment of the proper fee and commissions the Receiver will issue his receipt therefor.

The entry will thereupon be noted on your records, and reported with

your monthly returns in distinct abstracts, under the head of "Timber-culture entries under the provisions of the first section of the act of March 3, 1873," commencing the series with No. 1.

Parties making entries under the provisions of this section of the act will be required to complete the planting of the prescribed area with trees within one year from the date of entry.

[The balance of this circular is the same as paragraphs numbered 6th, 7th and 8th, on page 652, of No. 515, with the following table.]

The fees and commissions upon entries under the first section of the timber-culture act of March 3, 1873, payable at date of entry, will be:

On 160 acres, at \$1.25, fee \$10; commissions \$4.

On 160 acres, at \$2.50, fee \$10; commissions \$8.

In cases of homestead proof, under the fourth section of this act, the following ratio of timber must be shown to have been planted and cultivated, viz:

In case of a homestead entry of 160 acres, 10 acres of timber required.

In case of a homestead entry of 80 acres, 5 acres of timber required.

In case of a homestead entry of 40 acres, 2½ acres of timber required.

(For Forms, see No. 265, page 200.)

No. 514.

CIRCULAR,

Refusing to modify previous instructions.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., June 30, 1873.

REGISTERS AND RECEIVERS, U. S. LAND-OFFICES.

GENTLEMEN:—I have received numerous letters requesting a modification of the instructions issued by this office April 21, 1873, under the act of Congress approved March 3, 1873, entitled "An act to encourage the growth of timber on western prairies."

It is claimed that parties making entries under the 1st section of the act are entitled, by its terms, to three years to complete the planting of the prescribed area with trees, and that they should not be limited to one year in the regulations. While it is true that the act does not specifically mention any particular time within which the planting shall be done by parties making entries under the 1st section, the 4th section clearly limits the time for planting, by a homestead claimant, to one year from the date of entry, as it requires him to show at the end of the third year that he has had the trees which he is required to plant under cultivation for two years. This he cannot do, unless the trees are planted within one year from the date of entry. Congress thus fixed a time for homestead claimants under the 4th section, and as no time was fixed in the case of parties making entries under the 1st section, I adopted, in entries of that class, the time which Congress considered reasonable and proper to allow homestead claimants, and limited them to one year. A different construction might have been reached by separating the 1st and 2d sections of the act from the other portions thereof; but considering the whole act, I did not feel authorized to give to parties making entries under the 1st section more time than Congress granted to homestead settlers by the 4th section. Admitting that the act is ambiguous, and that there is room for a difference of opinion on the point under consideration, I cannot conclude that Congress intended to make a discrimination against settlers under the homestead law, who,

through poverty, privation and toil, are rendering an essential and valuable service to the commonwealth by making their homes upon wild lands, and reducing them to cultivation, and thereby adding to the productive area and resources of the country, and in favor of men who have the means to appropriate lands for speculative purposes, and who, when they take them under the 1st section of the act, are not required to reside upon or improve them further than may be necessary to the planting and cultivation of the requisite quantity of timber.

If any discrimination is to be made, I think it should be in favor of the poor man, who seeks a home for himself and family upon the public domain, and who is, by the homestead law, required to build his house and make his actual residence upon his land within six months from the date of his entry, and who has, therefore, about all he can do during the first year of his settlement to provide for the comfort of his family, and comply with the provisions of the homestead law, without being required to plant trees.

The law will have to be much plainer in its requirements than it is now, before I can consent to establish a rule which would be so obviously unjust to the homestead settler, and so clearly in the interest of speculation.

It is also claimed that parties are not limited to one entry, but may make as many as they please. Here again the act is somewhat obscure; but it would be so manifestly contrary to the principles embodied in the general legislation in relation to the public domain, as well as a sound public policy, to allow an individual to appropriate indefinite and unlimited quantities of the public land, that I cannot conclude that it was the intention of Congress to allow any person to take more than one quarter-section under the provisions of the act, and I have therefore decided that an individual cannot be allowed to make more than one entry, and that such individual cannot take more than one technical quarter-section.

In arriving at these conclusions I am, I confess, not absolutely certain that the language of the act will not authorize, or at least admit, a different construction; but to allow three years for planting trees, and then to permit an indefinite and unlimited number of entries by the same person, would be to aid in a speculative monopoly of the public domain by parties having no intention of complying with the requirements of the law as to tree culture.

I cannot think that Congress intended any such results to flow from the act referred to, and, therefore, I shall adhere to the regulations which I have issued, and limit parties to one year in which to complete their planting, and to one entry under the act, until Congress by further legislation authorizes or requires a modification of the rule.

WILLIS DRUMMOND, *Commissioner*.

No. 515.

CIRCULAR DATED APRIL 6, 1874.

Under the Timber-Culture Act of March 13, 1874.

REGISTERS AND RECEIVERS OF U. S. LAND-OFFICES.

GENTLEMEN: Your attention is called to the annexed act of Congress, entitled "An Act to amend the act entitled 'An Act to encourage the growth of timber on western prairies,'" approved March 13, 1874. (Part II., No. 103.)

You will observe that the privilege of entry under this act is confined to persons who are heads of families, or over twenty-one years of age, and who are citizens of the United States, or have declared their intention to become such ;

That the affidavit required on making an entry under this act may be made before you, or either of you, or before some officer authorized to administer oaths in your district, who is required by law to use an official seal ;

That not more than one quarter of any one section can be entered under this act ;

That the privilege of making more than one entry thereunder is confined to such parties as shall enter, in each and every instance, a fractional subdivision of less than 40 acres, and that the aggregate area of such entries shall not exceed 160 acres ;

That the ratio of area required to be broken, planted, &c., is, in all cases initiated under the first section of this act, one-fourth of the land embraced in the entry ;

That one-fourth of the area required to be devoted to timber must be broken within one year from date of entry ; one-fourth part more within two years from date of entry ; and the remaining one-half within three years from date of entry ;

That one-fourth part of the area required to be devoted to timber must be planted within two years from date of entry ; one-fourth part more within three years from date of entry ; and the remaining one-half within four years from date of entry ;

That the trees are required to be not more than twelve feet apart each way, and that the same are required to be protected, cultivated, and kept in a healthy growing condition for eight years next succeeding the date of entry ;

That if, at the expiration of the said eight years, or at any time within five years thereafter, the person making the entry, or, if he or she be dead, his or her heirs or legal representatives, shall prove by two credible witnesses the fact of such planting, cultivation, &c., of the said timber for not less than the said period of eight years, he, she, or they shall receive a patent for the land embraced in said entry ;

That in case of the death of a person who, having entered a quarter section, has complied with the provisions of this act for the period of three years—that is to say, who has broken ten acres the first year, ten acres the second year, and twenty acres the third year ; and who has planted ten acres with timber the second year, and ten acres the third year—then, and in that case, his or her heirs or legal representatives shall be permitted, at their option, to continue to comply with the provisions of this act during the unexpired portion of the eight years, and thereupon receive a patent for said quarter section ; or, on making proper proof of the compliance of the deceased settler with the requirements of the act for the said period of three years, they shall receive, without delay, a patent for forty acres of said quarter section, upon the condition that they relinquish to the United States all claim to the remainder of the land embraced in such entry ;

That if at any time after not less than one year from the date of entry under the first section of this act, and prior to the issue of a patent therefor, the claimant shall fail to do the breaking and planting required by this act, or any part thereof, or shall fail to cultivate, protect, and keep in good condition such timber, then, and in that event,

such land shall become liable to a contest, in the manner provided in homestead cases; and upon due proof of such failure, the entry shall be canceled and the land become again subject to entry by some other duly qualified person under this act, or by the first legal applicant under the homestead laws;

That each and every homestead settler, at any time after the end of the third year of his or her residence, who, in addition to the settlement and improvements required by the homestead laws, shall have had under cultivation for two years one acre of timber, (the trees thereon being not more than twelve feet apart each way, and in a good thrifty condition,) for each and every sixteen acres of said homestead, shall, upon due proof of such fact by two credible witnesses, receive his or her patent for said homestead;

That no land acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of final certificate therefor;

That the fees for all entries under this act shall be ten dollars, and the commission of registers and receivers on all entries (irrespective of area) shall be four dollars (two dollars to each) at the date of entry, and a like sum at the date of final proof;

That no distinction is made, as to area or the amount of fee and commissions, between minimum and double-minimum lands; a party may enter 160 acres of either, on payment of the prescribed fee and commissions;

That the fifth section of the act entitled "An Act in addition to an act to punish crimes against the United States, and for other purposes," approved March 3, 1857, shall extend to all oaths, affirmations, and affidavits required or authorized by this act;

And that persons who may have already made entries under the timber-culture act of March, 3, 1873, of which this is amendatory, shall be permitted to continue and complete the same in the manner and under the conditions prescribed by this act.

When application shall be made, in the accompanying Form A, to enter a tract of land under the provisions of the first section of this act, I have to direct:

First. That you will require such entry, whether the same shall comprise 160 acres, (more or less,) or 80 acres, to be confined to the N. E. $\frac{1}{4}$, the N. W. $\frac{1}{4}$, the S. E. $\frac{1}{4}$, or the S. W. $\frac{1}{4}$ of a given section; or, in other words, to a *technical quarter section*, or a *technical half-quarter section*, as the case may be, of prairie lands naturally devoid of timber.

Second. You will assure yourselves, by a careful reference to the plats and tract-books of your office, that the land applied for in any and all cases will not, in conjunction with any previous entry or entries, in the same section, that may have been made under this act, or the act of March 3, 1873, exceed one-quarter of the said section, which is the limit fixed by the law.

Third. In the case of an entry of a fractional subdivision containing less than forty acres, you will require the applicant to state in his affidavit that he has, or has not, as the case may be, made a previous entry of a similar fractional subdivision. If he shall have made one or more such previous entries, you will require him to exhibit to you his duplicate receipts, or patents therefor, and you will note the same by number, acres, district, and description of the land, upon the application

presented to you, thus: Previous entry No. —, [*Description*,] — acres, — District.

Fourth. When you shall have satisfied yourselves that the land applied for is properly subject to such entry, you will require the affidavit, Form B, and, on payment of the fee and first commissions, the Receiver will issue his receipt therefor.

Fifth. The entry will thereupon be noted upon your plat and tract-book, and reported with your monthly returns in distinct abstracts, under the head of "Timber-culture entries under the provisions of the first section of the act of March 13, 1874," commencing the series with No. 1, unless you shall have already commenced a series under the act of March 3, 1873, in which case *you will continue that series*, giving to entries under this act the current numbers thereof.

Sixth. The fee and commissions in this class of entries the Receiver will account for in the usual manner, indicating the same as fees and commissions on timber-culture entries, which will be charged against the maximum of \$3,000 now allowed by law.

Seventh. That when final proof is offered, under the provisions of the fourth section of this act, upon homestead entries, you will require the affidavit, Form C, and the proof, Form D, both of which must show that the homestead settler has resided upon his tract for not less than three years. Thereafter, on payment of the final homestead commissions, you will issue a final certificate, Form E, and a final receipt. Entries of this class will take current numbers in your regular final homestead series.

Eighth. In all cases of entry or homestead proof, under the provisions of this act, it will be required that the character of the trees planted shall come within the scope and meaning of the term "timber." Shrubbery and fruit trees cannot be accepted as meeting the requirements of the act.

WILLIS DRUMMOND, *Commissioner*.

(For Forms see No. 265, page 200.)

No. 516.

SEEDS, SLIPS AND CUTTINGS.

Parties making T. C. entries may use seeds, slips and cuttings, or transplant young trees, which must be kept in a thrifty growing condition.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., June 24, 1873.

REGISTER AND RECEIVER, *Jackson, Minn.*

GENTLEMEN:—In reply to your letter of May 20, 1873, in reference to the timber-culture act of March 3, 1873, I have to state that this Office does not require trees to be planted in any peculiar manner.

Parties may use seeds, slips and cuttings, or may transplant young trees, as they may think best.

The careful cultivation of the trees so as to keep them in a thrifty condition is indispensably necessary.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

(See page 85 Copp's Landowner, vol. 2.)

No. 517.

W. E. FOSNAT.

A few trees or bushes do not characterize the land upon which they are found as timber land within the meaning of the statute.

In all cases where land upon which a few trees are found is sought to be entered, the applications should be forwarded to the General Land-Office, through the district land-office, with full description of the tracts.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., June 6, 1874.

MR. W. E. FOSNAT, *Ellsworth, Kan.*

SIR:—In reply to your letter of the 5th ult., inquiring whether “a tree or five or six trees or bushes” on a section would characterize the same as “timber land” within the meaning of the statute, I have to state that they would not. In all cases where parties desire to enter land in certain sections under the timber-culture act, and a few trees or bushes may exist on *any portion of the section within which is embraced the land applied for*, said parties should forward to this Office, through the district land-office, applications to make said entries, the same to be accompanied by a full description of the existing timber thereon, stating the number of trees, character and size, as also a topographical account of the land and surroundings. On receipt of said information the field-notes of official survey will be examined, and a decision rendered in each case in conformity with the official description of the land and the requirements of the statute.

Regarding timber-culture entries heretofore made on land of the character referred to, you are informed that in view of the positive allegations to the contrary made by the parties when entering said land, the subsequent discovery of a “half-dozen or less trees or bushes” on the respective sections would not invalidate said entries.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 518.

O. A. A. GARDNER.

A party may elect to break the soil and plant the trees sooner than the timber culture act requires.

A party cannot alienate any portion of his timber culture entry for cemetery or village purposes.

The refusal of the wife to live on a homestead, provided the husband complies with the law, will not invalidate his rights.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

WASHINGTON, D. C., July 25, 1874.

MR. O. A. A. GARDNER, *Belleville, Republic Co., Kan.*

SIR:—In reply to your letter of June 10th last, relating to the timber culture act, I have to state that if a party who has made an entry under said act elects to complete the breaking of the soil and planting of trees sooner than is required by the act, there appears to be no objection thereto.

A party having entered a quarter section under the timber culture act cannot alienate any portion of the same for village or cemetery purposes, without vitiating his title to the entire tract.

The refusal of the wife of a homestead party to reside with her hus-

band upon the land would not invalidate his rights when making final proof, provided *he* had complied with the requirements of the statute regarding settlement and cultivation.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 519.

WM. T. NICHOLAS.

A timber-culture entry will be canceled when in conflict with a prior pre-emption claim. The filing of a homestead declaration does not withdraw the land filed upon, but subsequent filings and entries will be subject to the rights of the homestead claimant.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., August 4, 1874.

MR. W. T. NICHOLAS, *Atlanta, Rice County, Kansas*.

SIR:—In reply to your letter of June 22 last, relative to timber-culture entry No 367, on the N. W. $\frac{1}{4}$ of sec. 26, 20, 8 W., made by Nelson Reed, April 7 last, I have to state that the official records show that on the 21st of April last Abner F. Crew filed declaratory statement No. 14,021, under the pre-emption laws, for stated tract, alleging settlement on the 25th of March prior. Should Mr. Crew make proof and payment for the land under his filing, and the same be accepted by this office, the timber-culture entry made by Mr. Reed would be cancelled by reason of the prior settlement made by Mr. Crew. (See section 11 of the pre-emption act of September 4, 1841.)*

In answer to your query, "Could Mr. Crew make a legal settlement on the land while it was covered by a soldier's filing?" you are informed that the filing of a homestead declaration, under the act of June 8, 1872, for a tract of land, does not withdraw the land from entry or filing by other parties. Such subsequent filing or entry would be subject, however, to the rights of the party making the first filing.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 520.

S. GOOZEE.

Breaking the first ten acres in strips seven feet wide and twelve feet from centre to centre is not a compliance with the requirements of the timber culture act.

The legal representatives of a party who dies after making entry, may continue the cultivation and and protection of the growing timber, and the patent will issue in the name of "the heirs."

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., Feb. 11, 1875.

MR. S. GOOZEE, *Plum Creek, Dawson co., Neb.*

SIR:—In reply to your letter of the 22d ult., relative to the requirements of the timber culture act, as prescribed for the first year, on an entry made by you, I have to state that breaking the "first ten acres in strips 7 feet wide, 12 feet from centre to centre," is not considered in full compliance with the terms of the act and instructions. Section 2 states that "the party making an entry of a quarter section, under

*(See page 204.)

the provisions of this act, shall be required to break ten acres of the land covered thereby the first year." It is therefore held that the entire area of said ten acres must be broken during the first year.

If a party who had made a timber culture entry dies prior to the expiration of the three years referred to in the last clause of section 2 of the act, his heirs or legal representatives may continue the cultivation and protection of the growing timber for the remainder of the statutory period of eight years, and patent would issue in the name of "the heirs" of deceased.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 521.

LAMPSON v. DUNHAM.

Land through which passes a stream of water, upon the banks of which is a growth of "scrub" timber, is subject to entry under the timber culture laws.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., Oct. 23, 1874.

REGISTER AND RECEIVER, *Lowell, Nebraska*.

GENTLEMEN:—I am in receipt of the Register's letter of the 10th July last, with testimony in case of *William P. Lampson v. Jonathan Dunham*, timber culture entry No. 32, made June 2, 1873, on the S. W. $\frac{1}{4}$ sec. 24, Tp. 4, R. 9 W.

The contest in the above case was ordered on the ground that section 24, Tp. 4, R. 9 W., was not "naturally devoid of timber."

It appears from the testimony that there is a stream of water running through the east half of the section, along the banks of which is a growth of "scrub" timber. The area that said timber would cover, if in compact form, is variously estimated by the witnesses at from two to six acres.

In the opinion of this Office, land of the above description is included in the class of lands subject to entry under the provisions of the act of March 3, 1873.

I therefore affirm your joint report, and in so doing dismiss the contest.

You will notify all parties in interest of this decision, and allow the usual time in which to file an appeal.

Very respectfully,

W. W. CURTIS, *Acting Commissioner*.

Affirmed by Acting Secretary W. H. Smith, April 29, 1875, "for the reasons therein set forth."

No. 522.

L. R. MOYER.

The rules governing homestead contests govern timber-culture contests. Parties who have made timber-culture entries cannot commute by paying the Government price per acre for the land. Full compliance with the law for the full time must be shown before the title can pass to claimants.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., March 11, 1875.

MR. L. R. MOYER, *Montevideo, Chippewa Co., Minn.*

SIR:—In reply to your letter of the 27th ult., asking three questions relative to the timber-culture act, I have to state that by the proviso in

section 3 of the act of March 13, 1874, amendatory of the act of March 3, 1873, the Commissioner of the General Land-Office was authorized to establish rules regarding contested timber-culture entries, and consequently those governing homestead entries have been applied to the former. There is no provision in the timber-culture acts allowing parties who had made entries thereunder to commute the same by paying the Government price per acre for the land. Title to lands entered under said acts can only be acquired by compliance with the requirements of section 2 of the amendatory act.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 523.

G. M. KING.

A single woman, duly qualified, who has made an entry under the timber-culture act, and subsequently marries, is not thereby debarred from acquiring title to the land.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 23, 1875.

MR. G. M. KING, *Minneapolis, Kansas*.

SIR:—In reply to your letter of the 9th inst., with enclosure, I have to state that a single woman, duly qualified, who has made an entry under the timber-culture act, and subsequently marries, is not debarred by reason of said marriage from acquiring title to the land at the expiration of the statutory period, provided she has complied with all the requirements of the act relating thereto.

The letter enclosed by you is herewith returned.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 524.

M. J. HOWLAND.

A married woman not the head of a family cannot make a timber culture entry.

An illegal entry by a married woman may be cancelled, and her husband, if qualified, allowed to enter the land as a timber culture claim.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., June 30th, 1874.

REGISTER AND RECEIVER, *Lowell, Neb.*

GENTLEMEN:—I am in receipt of a letter from Wm. H. Howland, under date of the 19th inst., and also of one from his wife, Mary J. Howland, dated the 23d inst., both relating to her timber-culture entry No. 7, on N. W. $\frac{1}{4}$ sec. 32, Tp. 8, N., R. 9 W., made at your office May 21st, 1873. Mrs. Howland being a married woman, and therefore not the head of a family, said entry was illegal, and for this reason I have this day cancelled the same. Note the cancellation on your records, referring to this letter.

It appears that this entry was made in good faith, and that 40 acres of the land have been broken, and other valuable improvements made thereon. In view of these facts you will allow W. H. Howland, the husband of said Mary J. Howland, to enter the said land under

the timber-culture act of March 13, 1874, provided he be legally qualified to make such entry, and provided also that there be no valid adverse claim to the land.

Very Respectfully,

S. S. BURDETT, *Commissioner*.

No. 525.

D. C. FULTON.

The sale of a timber-culture claim by the original party who made entry vests no title in the purchaser, and is sufficient ground for cancellation of the entry.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 25th, 1875.

MR. D. C. FULTON, *Hudson, Wisconsin* :

SIR:—In reply to your letter of the 13th instant, I have to state that the sale of a timber-culture claim by the original party who made the entry, to another party, before completion of title, is not recognized by this Office, and not only vests no title in the purchaser, but is *prima facie* evidence of abandonment, and sufficient ground for cancellation of the claim. See section 3 of the timber-culture act of March 13, 1874.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 526.

ENTRY OF QUARTER-SECTIONS PARTLY DISPOSED OF.

Where a portion of a quarter-section is disposed of, the remainder may be entered for timber-culture, if the party is willing to cultivate in timber the full area of 40 acres, as required by law for one quarter section.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., June 10, 1873.

REGISTER AND RECEIVER, *Jackson, Minn.*

GENTLEMEN:—I am in receipt of your letter of May 24, 1873, in which you state that in your district it often occurs that a portion of a "technical quarter-section" has been selected by the State for swamp lands, &c., and that parties are desirous of securing the balance under the timber-culture act, and ask if in such cases parties can take the remaining government land if contiguous to their claim, and secure a patent under the act of March 3, 1873, by planting and cultivating as the law requires 40 acres of the tract in timber.

In reply I have to state that the intent of the law is to encourage the growth and culture of timber, and if a party is willing to plant and cultivate 40 acres, as the law requires, within the lines of a technical quarter-section, he will be entitled to a patent for such amount, if less than 160 acres, of the quarter-section, as remains undisposed of.

Very respectfully,

W. W. CURTIS, *Acting Commissioner*.

No. 527.

DYER AND WALKER.

The official township plat, showing timber on a certain tract, must be accepted as determining the character thereof, notwithstanding the positive allegations made by applicants for entry under the timber-culture law, and their witnesses. Application to enter refused.

Letter from the General Land-Office, to Register and Receiver at Cawker City, Kansas, June 20, 1874.

No. 528.

C. B. KITTRIDGE.

Timber-culture entries are confined to a technical quarter section or a technical half-quarter section, as the case may be, and the quantity of 160 acres cannot be entered by taking parts of adjoining quarter sections.

Letter from the General Land-Office to C. B. Kittridge, Glyndon, Minn., April 26, 1875.

No. 529.

CIRCULAR.

Timber Depredations.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
December 24, 1855.

GENTLEMEN:—The Secretary of the Interior has concluded to change the present system of timber agencies, and to devolve the duties connected therewith upon the officers of the local land districts. By his direction, therefore, you will, upon the receipt of these instructions, take charge of the timber business within the limits of your land district, as a part of the general duties of your office; and it is, accordingly, hereby assigned to you as such, with the understanding that, hereafter, it is to be considered and held as a proper incident to, and in fact a part of, your general duties, covered and satisfied by the salary which the law provides for your respective offices.

That you may understand the nature of this part of your duties, your attention is directed to the following:

1st. Attorney-General Wirt, in an opinion of the 27th May, 1821, holds as follows: "Independent of positive legislative provisions, I apprehend that, in relation to all property, real or personal, which the United States are authorized by the Constitution to hold, they have all the CIVIL remedies, whether for the prevention or redress of injuries, which individuals possess. (See 3 Wheaton, 181.) So the United States, being authorized to accept and to hold these lands for the common good, must have all the legal means of protecting the property thus confided to them that individuals enjoy in like cases. * * * They are, therefore, in my opinion, entitled to the injunction of waste by way of prevention, and to the action of trespass by way of punishment, in like manner as individuals, similarly situated, are entitled to them."

2d. Attorney General Taney, now Chief Justice of the United States, in an opinion of 22d August, 1833, cites this opinion of Mr. Wirt, and concurs in it.

Attorney General Mason, in a communication of 16th July, 1845, refers to the opinion of Attorney General Nelson, of the 11th August, 1843, and, in concurring in it, states that, "when the right of pre-emption exists, the settler who has complied with the provisions of the act of 4th September, 1841, has a right of occupancy for twelve months, within which he may perfect his title by paying the minimum price of the land. Like the settlers under the armed occupation act, his right is inchoate only; and he has only those rights of property which are necessary to the perfecting of his title. He may clear the land, build on it, and inclose it with a view to cultivation. For these purposes he may use or destroy any trees which may be necessary, but within these restrictions, and necessary fire-wood, he is confined."

The penal act of 2d March, 1831, provides "for the punishment of offences committed in cutting, destroying, or removing live-oaks and other timber or trees preserved for naval purposes."

This act of 2d March, 1831, you will find fully considered in the case of the *United States v. Ephraim Briggs*, (9 Howard, p. 351,) in which the Supreme Court decided that the said act authorized the prosecution and punishment of all trespassers on public lands by cutting timber, whether such timber was fit for naval purposes or not.

4th. Under no circumstances will you compound or compromise with any such trespassers, or receive any pay or compensation from them as acquittal or discharge therefrom, or in any other manner; neither will you give any permission to cut timber or otherwise trespass on the public lands, as there is no authority for any such proceeding; but all such offences against the law must be prosecuted and tried by the authorities duly constituted for that purpose.

5th. Should you find such trespass committed on *swamp* lands, or those which are rendered unfit for cultivation by overflow, you will take no further action than to notify the Governor of the State, as all such lands inure to the State under the act of 28th September, 1850.

6th. In the enforcement of the said act of 1831, you should be careful not to interfere with pre-emption rights under the act of 4th September, 1841, the settler, with a view to cultivation, having the right, as hereinbefore indicated, to use or destroy trees in clearing roads and constructing bridges, or for any other purpose connected with the improvement of his homestead.

7th. While thus liberal to the honest settler, you should be vigilant to detect and arrest the speculator, who, in the guise of a settler, and under the sanction of a declaratory statement, may contemplate the spoliation of timber, and unless arrested, might seriously injure the public interest.

8th. Where the trespassers are unknown or known, and timber has been cut or removed off the public lands, you will cause it to be seized and sold at auction to the highest bidder, under such regulations as sound discretion may suggest.

9th. All moneys, the proceeds of the sale of timber, received by you, must be deposited in some one of the United States depositories, to the credit of the judiciary fund, without abatement, and an immediate report made of the same to this office, with a full statement of all particulars, duly verified.

10th. In the prosecution of your duties you may, upon any pressing emergency, deputize a reliable person to investigate and report the facts involved in any supposed case of trespass, and allow a per diem of three dollars and a mileage at the rate of ten cents per mile.

In making any such appointment you will report the fact instantler, and the necessity for it, and will require, in the affidavit of the employé, a statement of the time actually occupied in the service, and the distance traveled. An account verified by the party and certified by you should be reported to this office for payment.

Where there is no pressing emergency for the appointment of an agent, you will refer the facts to this office for consideration, and await instruction.

11th. In returns to this office of sales of timber, you will be careful to designate the places of seizure, the quantity and kind of timber, whether in logs or manufactured, the price per foot, with the names and residences of purchasers, and cause the same to be verified by a certificate from the party making the seizure and sale.

12th. You are directed to make a report at the end of each quarter, the first to be rendered on 1st April next, of the proceedings of your office pursuant to these instructions, and showing the operation of this system as preventive means; also the number of acres entered by trespassers through its constraining influence.

You are requested to acknowledge the receipt of this, and advise me of such preliminary steps as you may take with a view to a compliance with the foregoing instructions.

Very respectfully, your obedient servant,

THOMAS A. HENDRICKS, *Commissioner*.

REGISTER AND RECEIVER.

TITLE VIII.—COAL LANDS.

No. 532.

INSTRUCTIONS.

Instructions to give effect to the act of Congress approved July 1, 1864, for the disposal of "COAL LANDS" and of "TOWN PROPERTY" in the public domain.

INTERIOR DEPARTMENT,
GENERAL LAND OFFICE,
August 20, 1864.

GENTLEMEN :—Annexed is the act of Congress approved July 1, 1864, for the disposal of "Coal Land" and of "Town Property on the public domain."

It will be observed that the word "mines," as used in the pre-emption act of 1841, is recognized in the first section of this law as importing any tracts of the public domain embracing "coal beds or coal fields," which are to be treated as *mineral lands*, and not subject to ordinary private entry.

2. That said tracts are to be disposed of at public sale, on not less than three months' public notice, to the highest bidder, in such "suitable legal sub-divisions" as the President may direct, at the minimum price of \$20 per acre; all tracts not thus disposed of are hereafter to be liable to private entry at said minimum.

3d. In order that this office may have reliable information as to what lands embrace "coal beds or coal fields," it will be your duty to institute proper inquiries, directed to reliable sources, as to the mineral character of the lands in your district; to ascertain what tracts of land come within the meaning of the terms "coal beds or coal fields," and make a prompt report of all such lands to this office.

4th. In reference to this matter, special orders will be given to the United States Surveyors-General to require their Deputy Surveyors, in executing the public surveys, carefully to designate in their field notes all localities of coal beds or coal fields in the *smallest legal sub-division*; and thereafter to have the same properly delineated on the official township plats returned to the General and District Land-Offices.

5th. The second section of this act relates to "TOWN PROPERTY," or the founding of cities or towns on the public domain, and limits the extent of the area of the city or town to 640 acres, to be laid off into lots, and which, after filing in the General Land-Office the transcript, statement, and testimony required by the act, are to be offered at public sale, to the highest bidder, at a minimum of ten dollars for each lot. Lots not thus disposed of are made thereafter liable to private entry at said minimum, or at such reasonable price as the Secretary of the Interior may order from time to time, as the municipal property may increase or decrease, after at least three months' notice.

A privilege, however, is granted to any *actual settler* upon any one lot of pre-empting that, and any additional lot on which he may have "substantial improvements," at said minimum, at any time before the day fixed for the public sale.

There are, however, certain preliminary conditions to be complied with, in order to the enjoyment of the privileges granted in this section.

Parties who have already founded or may hereafter found a city or town, are required—

6th. To file with the recorder of the county in which the town or city is situate a plat thereof, not exceeding 640 acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed.

7th. Also the plat or map of such city or town must exhibit the name of the city or town, the streets, squares, blocks, lots, and alleys; the size of the same, with measurement and area of each municipal subdivision, the lots in which shall each not exceed 4,200 square feet, with a statement of the extent and general character of improvements.

8th. Further, the said map and statement to be verified by oath by the party acting for and in the behalf of the founders of the city or town.

9th. Within one month after filing the map or plat with the recorder of the county, a verified copy of said map and statement is to be sent to the General Land-Office, accompanied by the testimony of two witnesses that such city or town has been established in good faith.

10th. Where the city or town is within the limits of an organized land district, a similar copy of the map and statement must be filed with the register and receiver.

11th. The third section provides for cities or towns founded on *unsurveyed* lands, and directs that it may be lawful to adjust the exterior limits of the premises with the lines of the public surveys, where it can be done without impairing the rights of others.

Patents are to issue for all lots sold under the provisions of this act as in ordinary cases.

12th. Section four authorizes the Secretary of the Interior, in case the parties interested shall fail or refuse, within twelve months of the founding of a city or town on the public domain, to file in the General Land-Office a copy of the map with the statement and testimony called for by the second section, to cause a survey and plat to be made of the said city or town, and thereafter the lots to be sold as provided, at an increase of fifty per cent. on the minimum price of ten dollars per lot.

13th. The fifth section repeals the act for the relief of the citizens of towns on the public lands, approved 23d May, 1844, and all other acts or parts of acts inconsistent with this act.

You are requested to acknowledge the receipt of this circular.

Very respectfully,

JOS. S. WILSON, *Acting Commissioner.*

REGISTERS AND RECEIVERS, U. S. LAND OFFICES.

An act for the disposal of Coal Lands and of Town Property in the Public Domain.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That where any tracts embracing coal beds, or coal fields, constituting portions of the public domain, and

which, as "mines," are excluded from the pre-emption act of eighteen hundred and forty-one, and which, under past legislation, are not liable to ordinary private entry, it shall and may be lawful for the President to cause such tracts, in suitable legal subdivisions, to be offered at public sale to the highest bidder, after public notice of not less than three months, at a minimum price of twenty dollars per acre; and any lands not thus disposed of shall thereafter be liable to private entry at said minimum.

SEC. 2. *And be it further enacted*, That in any case in which parties have already founded, or may hereafter desire to found, a city or town on the public lands, it shall and may be lawful for them to cause to be filed with the recorder for the county in which the same is situated, a plat thereof for not exceeding six hundred and forty acres, describing its exterior boundaries according to the lines of the public surveys, where such surveys have been executed; also giving the name of such city or town, and exhibiting the streets, squares, blocks, lots, and alleys, the size of the same, with measurements and area of each municipal subdivision, the lots in which shall each not exceed four thousand two hundred square feet, with a statement of the extent and general character of the improvements; the said map and statement to be verified under oath by the party acting for and in behalf of the persons proposing to establish such city or town; and within one month after such filing there shall be transmitted to the General Land-Office a verified transcript of such map and statement, accompanied by the testimony of two witnesses that such city or town has been established in good faith; and when the premises are within the limits of an organized land district, a similar map and statement shall be filed with the register and receiver; and at any time after the filing of such map, statement, and testimony in the General Land-Office, it shall and may be lawful for the President to cause the lots embraced within the limits of such city or town to be offered at public sale to the highest bidder, subject to a minimum of ten dollars for each lot; and such lots as may not be disposed of at public sale shall thereafter be liable to private entry at said minimum, or at such reasonable increase or diminution thereafter as the Secretary of the Interior may order from time to time, after at least three months' notice, in view of the increase or decrease in the value of the municipal property: *Provided*, That any actual settler upon any one lot as aforesaid, and upon any additional lot in which he may have substantial improvements, shall be entitled to prove up and purchase the same as a pre-emption, at said minimum, at any time before the day fixed for the public sale.

SEC. 3. *And be it further enacted*, That when such cities or towns are established upon unsurveyed lands, it shall and may be lawful, after the extension thereto of the public surveys, to adjust the extension limits of the premises according to those lines, where it can be done without interference with rights which may be vested by sale; and patents for all lots so disposed of at public or private sale shall issue as in ordinary cases.

SEC. 4. *And be it further enacted*, That if, within twelve months from the establishment of a city or town, as aforesaid, in the public domain, the parties interested shall refuse or fail to file in the General Land-Office transcript map, with the statement and testimony called for by the provisions of the second section of this act, it shall and may be lawful for the Secretary of the Interior to cause a survey and plat

to be made of such city or town, and thereafter the lots in the same shall be disposed of as required by said provisions, with this exception, that they shall each be at an increase of fifty per centum on the aforesaid minimum of ten dollars per lot.

SEC. 5. *And be it further enacted*, That effect shall be given to the foregoing act, according to such regulations as may be prescribed by the Secretary of the Interior. The act entitled "An act for the relief of the citizens of towns upon the lands of the United States, under certain circumstances," approved May twenty-three, anno Domini eighteen hundred and forty-four, and all other acts and part of acts inconsistent with this act, be and the same are hereby repealed.

Approved July 1, 1864.

No. 533.

CIRCULAR.

In relation to the Supplemental Act, approved March 3, 1865, for the Disposal of Coal Lands and Town Property on the public domain.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, April 26, 1865.

GENTLEMEN:—The act of Congress of 3d March, 1865, copy hereto appended, *supplementary* to the act of July 1, 1864, "for the disposal of coal lands, and of town property in the public domain," is to enable citizens of the United States, who at the date of the "act may be in the business of *bona fide* actual coal mining on the public lands, for the purpose of commerce," to enter 160 acres or less quantity, in legal subdivisions, including their improvements and mining premises, at the premium price of \$20 per acre.

The law, however, expressly *excludes* from its provisions any lands "reserved by the President of the United States for public uses."

The privilege granted is not a general one, but restricted to a single entry by a designated class of individuals, viz., such as are citizens, and who on the 3d March, 1865, the date of the act, were actually engaged for "*purposes of commerce*," in "the business of *bona fide* actual coal mining." All persons not so occupied at that date, are excluded from the enjoyment of the privilege.

1st. Testimony should be produced satisfactory to the Register and Receiver, showing the party to be a citizen of the United States, and that, at the date of the act, he was engaged "in the business of *bona fide* actual coal mining on the public lands," and "*for the purposes of commerce*."

The facts must be stated in detail, both as to the nature and extent of the coal mining; the period in which the business has been conducted, and in regard to the coal being made by the party an article of commerce, so that a correct judgment may be formed from these facts as to whether the case comes within the purview of the statute. Where the proof is clear and conclusive, the Register and Receiver are authorized to permit the entry according to "legal subdivisions" in compact form and so as not to exceed 160 acres.

2d. Where the mining improvements and premises are on land *surveyed*, "*at the passage of this act*," it is required that a sworn declaratory statement descriptive of the tract and premises, and also of the extent and character of the improvements, *be filed* within *six months* from

the date of the act, and that proof and payment must be made within *one year* from the *date* of such filing.

3d. If the mining premises be on land which may be *surveyed* after the passage of said act, then the declaratory statement shall be filed within three months from the return of the plat to the district land-office, and proof and payment must be made within *one year* from the date of such filing.

TOWN LOTS.

4th. The second section of the act relates to any city or town *existing* on the public lands at the *date* of the act, and modifies the limitation as to the extent of the areas of the town claim and town lots imposed by the act of 1st July, 1864.

The act of July 1, 1864, limits the town claim to 640 acres, and the town lots to 4200 feet each; but—

5th. This supplemental act embraces interests, "in which the lots and buildings, as municipal improvements, shall cover an area greater than" 640 acres, and removes the limitation in regard to subsisting cases by declaring that any city or town existing on 3d March 1865, shall not be debarred entry because of such excess of area over, or of variance from the size of the town claim or town lots as limited by the act of 1st July, 1864; that for the excess of square feet contained in said lots beyond the *maximum* named in the act to which this is amendatory, the *minimum* price of each lot shall be increased to such reasonable amount as the Secretary may establish.

6th. In the 2d section of this supplemental act, it is provided that parties having a *possessory* right to *mineral* veins "which possession is *recognized by local authority*" are to be protected therein; and titles to be acquired to town lots under this act are made subject to "such recognized possession and the necessary use thereof," yet with an *express saving of the paramount title* of the United States.

7th. The act of 1st July, 1864, relating to town property, is only modified as regards the *extent* of the town claim and the *size* of town lots, and by it you will be governed when not in conflict with this supplemental act. Hence it will be necessary for the citizens of the town or city existing at the date of the supplemental act—

First. To file with the Recorder of the county in which the town or city is situate, a plat thereof, describing its exterior boundaries, and according to the lines of public surveys, where such surveys have been executed.

Second. Also, the plat or map of such city or town must exhibit the name of the city or town, the streets, squares, blocks, lots, and alleys, the *size* of the same, *with actual measurements* and area of each municipal division, and a statement of the extent and general character of improvements.

Third. Further, the said map and statement to be verified by oath of the party acting for and in behalf of the city or town; and

Fourth. Within one month after filing the map or plat with the Recorder of the county, a verified copy of said map and statement must be sent to the Commissioner of the General Land-Office, with the testimony of two witnesses that such a town is a *bona fide* one, established and existing at the date of this act.

Fifth. Where the city or town is within the limits of an organized land district, a similar copy of the map and statement must be filed with the Register and Receiver thereof.

Sixth. Where the city or town is founded on *unsurveyed* lands, the exterior lines of the same must be distinctly marked and established, so that when the lines of the public surveys shall hereafter be run, they may be properly closed thereon; and yet it may be lawful to adjust the exterior limits of the premises with the lines of the public surveys, when it can be done without impairing the rights of others.

Seventh. Patents are to issue for all lots sold under the provisions of this act.

Eighth. By the 2d section of the act of 1st July, 1864, after the transcript and statement have been filed in the General Land-Office, the lots are to be offered at public sale to the highest bidder at a *minimum* of ten dollars per lot, but by the supplemental act, where the *area* of each lot exceeds the *maximum* of 4,200 square feet, the *minimum* price of each lot shall be increased to such reasonable amount as the Secretary of the Interior may establish.

A privilege, however, is granted to any actual settler upon any one lot of pre-empting that, and any additional lot on which he may have "substantial improvements," at said *minimum* or increased price, at any time before the day fixed for the *public sale*.

Very respectfully,

J. M. EDMUNDS, *Commissioner*.

Approved: JAS. HARLAN, *Secretary of the Interior*.

An Act supplemental to the act approved first July, eighteen hundred and sixty-four, "for the disposal of coal lands and of town property in the public domain."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That in the case of any citizen of the United States who, at the passage of this act, may be in the business of *bona fide* actual coal mining on the public lands, except on lands reserved by the President of the United States for public uses, for purposes of commerce, such citizen, upon making proof satisfactory to the register and receiver to that effect, shall have the right to enter, according to legal subdivisions, a quantity of land not exceeding one hundred and sixty acres, to embrace his improvements and mining premises, at the minimum price of twenty dollars per acre, filed in the coal and town-property act of first July, eighteen hundred and sixty-four; *Provided*, That where the mining improvements and premises are on land surveyed at the passage of this act, a sworn declaratory statement descriptive of the tract and premises, showing also the extent and character of the improvements, shall be filed within six months from the date of this act, and proof and payment shall be made within one year from the date of such filing; but where such mining premises may be on lands hereafter to be surveyed, such declaratory statement shall be filed within three months from the return to the district land-office of the official township plat; and proof and payment shall be made within one year from the date of such filing.

SEC. 2. *And be it further enacted*, That in the case of any city or town which, at the passage of this act, may be existing on the public lands, in which the lots therein may be variant as to size from the limitation fixed in the said act of first July, eighteen hundred and sixty-four, and in which the lots or buildings as municipal improvements shall cover an area greater than six hundred and forty acres,

such variance as to size of lots or excess in area shall prove no bar to such city or town claim, under said act of first July, eighteen hundred and sixty-four, effect to be given to this act according to such regulations as may be prescribed by the Secretary of the Interior; *Provided*, That the minimum price of each of said lots in any such town or city, which may contain a greater number of square feet than the maximum named in the act to which this is an amendment, shall be increased to such reasonable amount as the Secretary of the Interior may by rule establish; *Provided further*, That where mineral veins are possessed, which possession is recognized by local authority, and to the extent so possessed and recognized, the title to town lots to be acquired shall be subject to such recognized possession and the necessary use thereof; *Provided however*, That nothing contained herein shall be so construed as to recognize any color of title in possessors for mining purposes, as against the Government of the United States.

Approved March 3, 1865.

No. 534.

INSTRUCTIONS

Under the Coal Land Act of March 3, 1873.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., April 15, 1873.

GENTLEMEN:—The act of Congress approved March 3, 1873, entitled "An act to provide for the sale of the lands of the United States containing coal," is as follows, to wit: (See Part II., No. 94.)

Your attention is called to the following points:

1. The sale of coal lands is provided for—
 - 1st. By ordinary private entry under section one.
 - 2d. By granting a preference right of purchase based on priority of possession and improvement under section two.
2. The land entered under either section must be *by legal subdivisions*, as made by the regular United States survey; entry is confined to surveyed lands; to such as are vacant, not otherwise appropriated, reserved by competent authority, or containing valuable minerals other than coal.
3. Individuals and associations may purchase; if an individual, he must be twenty-one years of age and a citizen of the United States, or have declared his intention to become such citizen.
4. If an association of persons, each must be qualified as above.
5. A person is not disqualified by the ownership of any quantity of other land, nor by having removed from his own land in the same State or Territory.
6. Any individual may enter by legal subdivisions as aforesaid any area not exceeding one hundred and sixty acres.
7. Any association may enter not to exceed three hundred and twenty acres.
8. Any association of not less than four persons duly qualified, who shall have expended not less than \$5,000 in working and improving any coal mine or mines, may enter under section two not exceeding six hundred and forty acres, including such mining improvements.
9. The price per acre is \$10 where the land is situated *more than*

fifteen miles from any completed railroad; and \$20 per acre where the land is *within* fifteen miles of such road.

10. Where the land lies *partly within* fifteen miles of such road, and in *part outside* such limit, the *maximum* price must be paid for all legal subdivisions, the greater part of which lies within fifteen miles of such road.

11. The term "completed railroad" is held to mean one which is actually constructed on the face of the earth; and lands within fifteen miles of any point of a railroad so constructed will be held and disposed of at \$20 per acre.

12. Any duly qualified person or association must be preferred as purchasers of those public lands on which they have opened and improved, or shall open and improve, any coal mine or mines, and which they shall have in actual possession.

13. Possession by agent is recognized as the possession of the principal. The clearest proof on the point of agency must, however, be required in every case, and a clearly defined possession must be established.

14. The *opening and improving* of a coal mine, in order to confer a preference right of purchase, must not be considered as a mere matter of form; the labor expended and improvements made must be such as to clearly indicate the good faith of the claimant.

15. These lands are intended to be sold where there are adverse claimants therefor to the party who by substantial improvements, actual possession, and a reasonable industry shows an intention to continue his development of the mines, in preference to those who would purchase for speculative purposes only. With this view, you will require such proof of compliance with the law, when lands are applied for under section two, by adverse claimants, as the circumstances of each case may justify.

16. In conflicting claims, where improvements have been made *prior to March 3, 1873*, you will, if each party make subsequent compliance with the law, award the land *by legal subdivisions*, so as to secure to each, as far as possible, his valuable improvements; there being no provisions in the act allowing a joint entry by parties claiming separate portions of the same legal subdivision.

17. In conflicts when improvements, &c., have been commenced subsequent to March 3, 1873, or shall be hereafter commenced, priority of possession and improvements shall govern the award when the law has been fully complied with by each party. A mere possession, however, without satisfactory improvements, will not secure the tract to the first occupant, when a subsequent claimant shows his full compliance with the law.

18. After an entry has been allowed to one party, you will make no investigation concerning it at the instance of any person, except on instructions from this Office. You will, however, receive all affidavits concerning such case and forward the same to this Office, accompanied by a statement of the facts as shown by your records.

19. Prior to entry, it is competent for you to order an investigation, on sufficient grounds set forth under oath of a party in interest, and substantiated by the affidavits of disinterested and credible witnesses.

20. Notice of contest, in every case where the same is practicable, must be made by reading it to the party to be cited and by leaving a copy with him. This notice must proceed from your office and be

signed by the register or receiver. Where such personal service cannot be made by reason of the absence of the party, and because his whereabouts are unknown, a copy may be left at his residence, or if this is unknown, by posting a copy in a conspicuous place on the tract in controversy, and by publication in a weekly newspaper having the largest general circulation in the vicinity of the land, (where no newspaper shall be specified by this Office,) for five consecutive insertions, covering a period of four weeks next prior to the trial; and in each case requiring such notice, a copy must be forwarded with the returns to this Office, accompanied with proof of service by affidavit indorsed thereon.

21. In every case of contest, all papers in the same must be forwarded to this Office for review before an entry is allowed to either party.

22. Thirty days from your decision will be allowed by you to enable any party to take an appeal, or file argument to be forwarded to this Office.

23. No appeal will be entertained unless the same shall be forwarded through the district land-office.

24. The party may still further appeal from the decision of the Commissioner of the General Land-Office to the Secretary of the Interior. This appeal must be taken within sixty days after service of notice on the party. This may be filed with the district land-officers and by them forwarded, or it may be filed with the Commissioner, and must recite the points of exception.

25. If not appealed, the decision is by law made final. (See section 10, act June 12, 1858, United States Statutes, volume 11, page 326.) After appeal, thirty days are usually allowed for filing arguments, and the case is then sent to the Secretary, whose decision is final and conclusive.

26. Manner of obtaining title: First, by private entry. The party will present the following application to the register, and will make oath to the same:

I, ———, hereby apply under the provisions of the act approved March 3, 1873, entitled "An act to provide for the sale of the lands of the United States containing coal," to purchase the ——— quarter of section ———, in township ——— of range ———, in the district of lands subject to sale at the land-office at ———, and containing ——— acres, and I solemnly swear that no portion of said tract is in the possession of any other party; that I am twenty-one years of age, a citizen of the United States, (or have declared my intention to become a citizen of the United States,) and have never held nor purchased lands under said act, either as an individual or as a member of an association; and I do further swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver or copper, and that there is not within the limits of said land to my knowledge any valuable mineral deposit other than coal. So help me God.

To this affidavit the register will append the usual jurat.

27. Thereupon the register, if the tract is vacant, will so certify to the receiver, stating the price, and the applicant must then pay the amount of the purchase-money.

28. The receiver will then issue to the purchaser a duplicate receipt,

and at the close of the month the register and receiver will make returns of the sale to the General Land-Office, from whence, when the proceedings are found regular, a patent or complete title will be issued; and on surrender of the duplicate receipt such patent will be delivered, at the option of the patentee, either by the Commissioner at Washington, or by the register at the district land-office.

29. This disposition at private entry will be subject to any valid prior adverse right which may have attached to the same land, and which is protected by section 2.

30. Second. When the application to purchase is based on a priority of possession, &c., as provided for in section 2, the claimant must, when the township plat is on file in your office, file his declaratory statement for the tract claimed within sixty days from and after the first day of his actual possession and improvement. Sixty days, exclusive of the first day of possession, &c., must be allowed.

31. The declaratory statement must be substantially as follows, to wit:

I ———, being ——— years of age, and a citizen of the United States (or having declared my intention to become a citizen of the United States,) and never having, either as an individual or as a member of an association, held or purchased any coal-lands under the act approved March 3, 1873, entitled "An act to provide for the sale of the land of the United States containing coal," do hereby declare my intention to purchase, under the provisions of said act, the ——— quarter of section ———, in township ——— of range, ——— of lands subject to sale at the district land office at ———, and that I came into possession of said tract on the ——— day of ——— A. D. 18—, and have ever since remained in actual possession continuously, and have expended in labor and improvements on said mine the sum of ——— dollars, the labor and improvements being as follows: (here describe the nature and character of the improvements:) and I do furthermore solemnly swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal.

32. When the township plat is not on file at date of claimant's first possession, the declaratory statement must be filed within sixty days from the filing of such plat in your office.

33. When improvements shall have been made prior to June 4, 1873, the declaratory statement must be filed within sixty days from that date.

34. No sale under this act will be allowed by you prior to September 4, 1873. One year from and after the expiration of the period allowed for filing the declaratory statement is given within which to make proof and payment, but you will allow no party to make final proof and payment, except on notice as aforesaid to all others who appear on your records as claimants to the same tracts.

35. A party who otherwise complies with the law may enter *after* the expiration of said year, *provided*, no valid adverse right shall have intervened. He postpones his entry beyond said year at his own risk, and the Government cannot thereafter protect him against another who complies with the law, and the value of his improvements can have no weight in his favor.

36. One person can have the benefit of one entry or filing *only*. He

is disqualified by having made such entry or filing alone, or as a member of an association. No entry can be allowed an association which has in it a single person thus disqualified, as the law prohibits the entry or holding of more than one claim, either by an individual or an association. You are to allow no entry under this act of lands containing other valuable minerals. You will determine the character of the land under the present rules relative to agricultural and mineral lands. Those that are sufficiently valuable for other minerals to prevent their entry as agricultural lands, cannot be entered under this act.

37. Assignments of the right to purchase under this act will be recognized when properly executed. Proof and payment must be made however, within the prescribed period, which dates from the first day of the possession of the assignor who initiated the claim.

38. You will so construe this act in its application as not to destroy or impair any rights which may have attached prior to March 3, 1873. Those persons who may have initiated a valid claim under any prior law relative to coal-lands will be permitted to complete their entries under the same.

39. You will report at the close of each month as "sales of coal-lands" all filings and entries under this act in separate abstracts, commencing with number *one*, and thereafter proceeding consecutively in the order of their reception. Where a series of numbers has already been commenced by sale of coal lands, you will continue the same without change. The affidavit required from each claimant under section two at the time of actual purchase will be as follows, to wit:

I, _____, claiming the right of purchase under the act of Congress entitled "An act to provide for the sale of the lands of the United States containing coal," approved March 3, 1873, to the _____ quarter of section _____, in township _____ of range _____, subject to sale at _____, do solemnly swear that I have never had the right of purchase under this act, either as an individual or as a member of an association, and that I have never held any other lands under its provisions; I further swear that I have expended in developing coal-mines on said tract, in labor and improvements, the sum of _____ dollars, the nature of such improvements being as follows: _____; that I am now in the actual possession of said mines, and make the entry for my own use and benefit, and not direct or indirectly for the use and benefit of any other party; and I do furthermore swear that I am well acquainted with the character of said described land, and with each and every legal subdivision thereof, having frequently passed over the same; that my knowledge of said land is such as to enable me to testify understandingly with regard thereto; that there is not to my knowledge within the limits thereof any vein or lode of quartz or other rock in place bearing gold, silver, or copper, and that there is not within the limits of said land, to my knowledge, any valuable mineral deposit other than coal. So help me God.

I, _____, of the land-office at _____, do hereby certify that the above affidavit was sworn and subscribed to before me this _____ day of _____, A. D. 18____.

40. In case the purchaser shows by an affidavit that he is not personally acquainted with the character of the land, his duly-authorized agent who possesses such knowledge may make the required affidavit as to its character; but whether this affidavit is made by principal or agent, it must be corroborated by the affidavits of two disinterested and credible witnesses having knowledge of its character.

WILLIS DRUMMOND, *Commissioner*.

TO REGISTERS AND RECEIVERS.

No. 535.

ROCKY MOUNTAIN COAL AND IRON CO.

The one coal entry allowed to a person or corporation need not be in compact form, the only restriction being in quantity, bounded by legal lines of subdivision.

Odd sections in U. P. R. R. limits, containing coal, pass with the grant, unless rights had accrued under the coal acts of July 1, 1864, and March 3, 1865.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., August 11, 1873.

REGISTER AND RECEIVER, *Cheyenne, Wyoming.*

GENTLEMEN:—I have to call your attention to the case of the Rocky Mountain Coal and Iron Company, transmitted with register's letter of June 2, ultimo, being in the nature of correspondence between the president of said alleged company and your office, respecting the construction of the coal law of March 3, 1873, in its relation to odd sections within the limits of the grant to the Union Pacific Railroad Company, under acts of July 1, 1862, and July 2, 1864.

Also, as to the requirements of the act respecting contiguity of the tracts that may be embraced in the entry.

It does not appear that any offer of a declaratory statement has been made, nor is there any showing of the status of the company, the number of whom it is composed, nor of the nature, extent and value of the improvements, as required by the law and instructions.

There is, therefore, no question legitimately before this Office upon which said alleged company can claim a decision.

The correspondence, however, indicates an intention to apply for N. E. $\frac{1}{4}$ and N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ sec. 6, 15 N., 120 W., the E. $\frac{1}{2}$ of sec. 30, 16 N., 120 W., and the S. $\frac{1}{4}$ of S. E. $\frac{1}{4}$ sec. 31, 16 N., 120 W., the latter tract being part of an odd section within the twenty miles limited by the act of July 2, 1864, granting lands to the Union Pacific Railroad Company.

Section 4 of said act expressly provides that "the term 'mineral land,' wherever the same occurs in this act and the act to which this is an amendment, shall not be construed to include coal and iron land," thus plainly including such land in the grant to the company whenever found upon the odd sections granted.

There was no law then in force for the disposal of these lands, except by public offering under the act passed the day previous, and no rights have been acquired under that act or the subsequent act of March 3, 1865.

The road was definitely located as early as 1868, and it follows that the United States had no rights to confer upon claimants by the passage of the act of March 3, 1873.

Your construction of the law on this point is fully concurred in by this Office.

Your opinion respecting the requirements of the act as to contiguity also meets my approval.

While the law limits each individual to one entry, and prohibits the holding of any other lands by one who has in any manner participated in the one entry allowed, it is not provided that the tract or tracts entered shall be in compact form, the only restriction being that of quantity, bounded by legal lines of subdivision.

You are therefore at liberty to receive proper filings and applications to enter, in accordance with your view of the law, as expressed in the correspondence referred to.

Duly notify the applicants in this case of this ruling; and should they desire to appeal the case to the Secretary, they will be permitted to do so, notwithstanding the irregularity of the case as presented, to save any rights they may claim from passing beyond the limitation of the law as to time, and becoming subject to adverse claims of later date; they should, however, at once file their formal declaratory statement for the lands which they intend to hold under the act. Sixty days are allowed for appeal.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 536.

WYOMING COAL AND MINING COMPANY.

Form of a Declaratory Statement of a corporation.

To the D. S. of a coal corporation should be attached a copy of the certificate of incorporation, the sworn statement of the secretary, giving the names of all stockholders at date of purchase, and the affidavit of each stockholder that he has not had the benefit of the act.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., August 14, 1873.

REGISTER AND RECEIVER, *Cheyenne, Wyoming*

GENTLEMEN:—You transmitted with your letter of the 20th June last the declaratory statement of the Wyoming Coal and Mining Company, and requested instructions as to whether or not the same was made in due form.

When an incorporated company desires to apply for a patent for coal land under the act of Congress approved March 3, 1873, the form of the declaratory statement should be in terms as follows, viz:

The Wyoming Coal and Mining Company, a corporation consisting of four or more persons, organized under the general incorporation laws of the State of Nebraska, a copy of the certificate of incorporation being hereto attached, and having its principal office and place of business in Omaha, Nebraska, by its secretary and treasurer, Thomas Waddle, declares that, to the best of his knowledge and belief, each and every stockholder in said company is a citizen of the United States, or has declared his intention to become such; that no stockholder of said company, either as an individual or a member of any other association, incorporated or otherwise, has held or purchased any coal lands under the act approved March 3, 1873, entitled "An act to provide for the sale of lands of the United States containing coal; and that it is the intention of said company to purchase, under the provisions of said act, the — quarter of section —, &c. (The remainder of the D. S., as filed, is satisfactory.)

In case an incorporated company should file a D. S. under said act, it will be necessary for the secretary of the company to file his affidavit, setting forth, in full, the names of all the stockholders at the date of actual purchase. It will also be necessary for each stockholder to file an affidavit to the effect that he has never held or purchased any

coal lands under the act approved March 3, 1873, entitled "An act to provide for the sale of the lands of the United States containing coal," either as an individual or as a member of an association. While the act of March 3, 1873, limits each individual to one entry, and prohibits the holding of any other coal lands by one who has in any manner participated in the one entry allowed, it is not provided that the tract or tracts entered shall be in compact form, the only restriction being that of quantity, bounded by legal lines of subdivision.

In accordance with your request, I return the declaratory statement of the Wyoming Coal and Mining Company, with amendments made.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

No. 537.

JOHN YOAKUM.

Claims under the donation act of September 27, 1850, will be patented upon compliance with the requirements of the statute, although coal may have been discovered upon the tracts embraced therein.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., March 28, 1874.

JOHN YOAKUM, Esq., *Empire City, Oregon*.

SIR:—In reply to your letter of the 20th November last, I have to state that the act of 27th September, 1850, making donations to settlers in Oregon, expressly provides that "no mineral lands shall be located or granted under the provisions of this act."

In your letter you state that the land embraced by your claim is now "claimed as coal land." The first act of Congress regulating the disposal of coal lands was that of July 1, 1864. Previous to that time land containing coal was not held to be excluded from sale under the acts of Congress regulating the disposal of agricultural lands, and parties whose rights were initiated under said act of 27th September, 1850, will be permitted to receive patents for their claims upon full compliance with the law and instructions, although coal may have been discovered upon the tracts claimed by them.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 538.

ALMA ELDRIDGE.

Coal land cannot be included in a town-site entry. Hearings may be had to determine the character of land in conflict.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., April 21, 1874.

ALMA ELDRIDGE, Esq., *Coalville, Utah*.

SIR:—In reply to your letter of the 1st instant, I have to state that the town-site acts provide, among other things, that no title "shall be acquired to any valid mining claim or possession held under the existing laws of Congress" by virtue of the provisions of said town-site acts. Where land has been returned as "coal land" by the surveyor-

general, it cannot be entered as a town-site until a hearing has been held to determine the character of the land, viz: whether it is mineral or agricultural in character. The coal-land law provides for the sale of land by *legal subdivisions only*, and hence it will be necessary to present evidence in regard to *each forty-acre tract* in controversy. I enclose herewith circular instructions from this Office showing the manner in which hearings must be held to determine the true character of lands. [May 6, 1871; March 20, 1872, and June 10, 1872.]

Very respectfully,

W. W. CURTIS, *Acting Commissioner.*

No. 539.

M. H. DUNNELL.

Parties owning coal mines have no authority under the law for following their veins or coal beds under the land adjoining.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 25, 1874.

HON. M. H. DUNNELL, *House of Representatives.*

SIR:—In reply to the letter from E. D. Rogers, dated Freeborn, Minn., April 27, 1874, referred by you to this Office, I have to state that parties owning coal mines have no authority under the law to follow their vein or coal bed under the land adjoining. The right to follow the vein, although it may enter the land adjoining, is only authorized by law in cases of veins or lodes bearing the precious metals.

Where land is known to contain valuable deposits of coal, it cannot be entered under the pre-emption or homestead acts.

Very respectfully, your obedient servant,

W. W. CURTIS, *Acting Commissioner.*

No. 540.

W. S. FOSTER.

School sections of Wyoming Territory containing coal are reserved from sale, except where, after March 3, 1873, parties are found in actual occupancy thereof at date of survey.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 30, 1873.

W. S. FOSTER, ESQ., *Rock Springs, Wyoming Territory.*

SIR:—I am in receipt of your letter of April 6, 1873, wherein inquiry is made as to "how the new coal law affects school sections." Your question is understood to be whether the sections designated sixteen and thirty-six in each township within the limits of Wyoming Territory, which are found to contain valuable deposits of coal, are reserved for school purposes, or can be sold as other coal lands, under the act of March 3, 1873.

Section 14 of the act approved July 25, 1868, providing for a temporary government for the Territory of Wyoming, makes no exception in reserving sections sixteen and thirty-six for school purposes in each township, and this Office is therefore without authority of law for disposing of school sections within Wyoming Territory, except in

cases where, after the passage of the act of March 3, 1873, the parties are found in actual occupancy of the lands at the date of survey.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 541.

J. P. HOGDEN, ET AL.

Application to enter a School Section in California, under the Coal Act,
Received.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., Nov. 3, 1874.

REGISTER AND RECEIVER, *Shasta, California*.

GENTLEMEN:—With your letter of August 14, last, you transmitted the application of James P. Hogden and Cyrus T. Wheeler to enter under the provisions of the act of March 3, 1873, entitled "An act to provide for the sale of the lands of the United States containing coal," the S. $\frac{1}{4}$ of section 16 in T. 33 N., R. 1 W., M. D. M.

This application should have been sworn to by the applicants.

Upon the back of this application you made the following endorsement, viz:

"Presented Aug. 14, 1874.

AARON BELL, *Register*.

"The sale of the land described in the within application is refused on the grounds that said land was granted to the State of California for school purposes by 6th section of act of Congress approved March 3, 1853.

AARON BELL, *Register*."

From this decision an appeal has been taken to this Office, and the question is presented whether lands which are found upon survey to be designated as section sixteen or thirty-six pass to the State of California under the act of March 3, 1853, entitled "An act to provide for the survey of the public lands in California, the granting of pre-emption rights therein, and for other purposes," where the same contain valuable deposits of coal.

On the 23d April, 1873, the Hon. Sec. of the Interior, in case of the *Keystone Consolidated Mining Company et al. v. the State of California*, decided "That no mineral lands were granted by the act of 1853.

It is true that the mining companies referred to in the Hon. Secretary's decision, above referred to, were claimants under the act of Congress, approved July 26, 1866, but the views therein expressed equally apply to claimants under the coal land law of March 3, 1873.

That lands containing valuable deposits of coal have been considered and treated as *mineral lands* is evident from the text of the act of July 1, 1864, entitled, "An act for the disposal of coal lands and of town property in the public domain," viz.: "That where any tracts embracing coal beds or coal fields, constituting portions of the public domain, and which as *mines* are excluded from the pre-emption act of eighteen hundred and forty-one, and which under past legislation are not liable to ordinary private entry," &c.

Your decision is, therefore, reversed, and you will allow said appli-

cants to file upon and make entry of said tracts, upon full compliance with the law and instructions, should no appeal be taken from this decision within sixty days from the date of your notification to all parties in interest.

I return herewith said application, and enclose a copy of said decision of April 28, 1873. You will inform all parties in interest, and acknowledge the receipt hereof.

Very respectfully,

S. S. BURDETT, *Commissioner*.

Affirmed by the Secretary on appeal May 7, 1875.

TITLE IX.—TOWN SITES.

No. 543.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
October 20, 1865.

TO REGISTERS AND RECEIVERS, UNITED STATES LAND OFFICES.

Referring to the Circulars from this Office, bearing date August 20, 1864, and April 26, 1865, in relation to the act of Congress approved July 1, 1864, and the amendatory law of March 3, 1865, relating to "coal land and town property" on the public domain, I now herewith append for your information and government in the matter therein specified the ruling for the Hon. James Harlan, Secretary of the Interior, under date of October 16, 1865:

"In accordance with the authority vested in me by the acts of Congress approved July 1, 1864, and March 3, 1865, I hereby prescribe the following regulations for the disposal of coal lands and town property in the public domain:

"The minimum price of each lot in a town surveyed before the above-named act of July 1, 1864, took effect, containing over 4,200 square feet and not more than 8,400 square feet, shall be fifteen dollars; of each lot containing over 8,400 square feet and not more than 12,600 square feet, the minimum price shall be eighteen dollars; of each lot containing over 12,600 square feet and not more than 16,800 square feet, the minimum price shall be twenty dollars; and for larger lots the price shall be increased two dollars for every additional 4,200 square feet.

"In the case of out-lots in any such village, town or city, the minimum price of such out-lots shall be ten dollars; of such out-lots containing more than one acre, the minimum price shall be ten dollars for the first acre, and five dollars for each additional acre in such lot."

J. M. EDMUNDS, *Commissioner*.

[For copies of the acts of 1864 and 1865, and the instructions thereunder, see Coal Lands, Title VIII. Nos. 532, 533.]

No. 544.

CIRCULAR.

[Reissued April 1, 1871.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
September 21, 1868.

GENTLEMEN:—The act of Congress, hereto appended, approved March 2, 1867—Statutes, vol. 14, page 541—

1st. Grants to the inhabitants of cities and towns on the public lands

the privilege of entering the lands occupied as town sites at the minimum price of one dollar and twenty-five cents per acre, through the corporate authorities of such towns and cities, or the judges of the county courts acting as trustees for the occupants thereof.

This privilege is granted where such mode of obtaining title to town property is preferred to that provided in the act of July 1, 1864, Statutes, vol. 13, page 343, and the amendatory act of March 3, 1865, vol. 13, page 529, the said statute of 1867 not repealing the enactments of 1864 and 1865. The inhabitants of these towns or cities are limited, however, to one or the other of the modes provided in these statutes, and cannot commence proceedings under both systems.

2d. The act of June 8, 1868, herewith, amendatory of the act of March 2, 1867, stipulates that the inhabitants of any town located on the public lands may avail themselves, if the town authorities elect to do so, of the provisions of said last named act, *provided* the issuing of patents to persons who have made or may make entries, and elect to proceed under existing laws, shall not thereby be prevented.

As proceedings to acquire title to town property cannot be commenced under both systems in force since March 2, 1867, the amendatory act must refer to cases where, previous to March 2, 1867, the inhabitants of any town or city had filed a plat of the same with the County Recorder, pursuant to the act of July 1, 1864, and had partly proved up and paid for the lots claimed by them under the proviso in the 2d section of the said act, and extends the privileges of the act of March 2, 1867, if the town authorities elect to proceed under it, to such of the inhabitants as have not yet paid for their lots, without interfering with the issuing of patents to those who had made, or might make, entries, and elect to proceed under the acts of July 1, 1864, and March 3, 1865.

3d. Accordingly where proceedings had been commenced by the inhabitants of any town or city before the passage of the act of March 2, 1867, and a part of them, not having entered and paid for their lots, desire to proceed under said last named act, you will allow the town authorities, if they apply to you for that purpose, to enter or file upon, pursuant to the provisions of said act, such portion of the town site as has not already been entered and paid for, and is not in possession of parties electing to complete their titles under the original proceedings; after which that part of the town site so entered or filed upon, will be disposed of under the statutes of 1867 and 1868, and the remaining portion, if any, under the enactments of 1864 and 1865.

4th. The aforesaid amendatory act of June 8, 1868, further provides that, in addition to the minimum price of the lands included in any town site entered under the statute of March 2, 1867, and said act of June 8, 1868, there shall be paid by the parties availing themselves of the provisions of said acts all costs of surveying and platting any such town site, and expenses incident thereto, incurred by the United States, before any patent therefor shall issue. Hence, when it is desired to enter a town site found upon the *unsurveyed* public lands, a written application should be presented to the Surveyor-General of the proper district for a survey of the same, under the 10th section of the act of May 30, 1862, vol. 12, pages 409 and 410, and the amount estimated by him as sufficient to cover the said costs and expenses deposited with any Assistant U. S. Treasurer, or designated depository in favor of the United States Treasurer, to be passed to the credit of the fund created by "Individual Depositors for the Survey of the Public Lands," the deposi-

tor taking a duplicate certificate of deposit, one to be filed with the Surveyor-General to be sent to the General Land-Office, and the other retained by the depositor. On receiving such certificate, showing that the requisite sum has been deposited in a proper manner to pay for the work, the Surveyor-General will transmit to the Register and Receiver of the District Land-Office his certificate of such payment having been made, and will contract with a competent U. S. Deputy Surveyor, and have the survey made and returned in the same manner as other public surveys, after which the lands embraced within the site may be entered, or filed upon, as in the case of town sites upon surveyed lands.

5th. When town sites are located upon land already surveyed, the entry must be made in conformity to the legal subdivisions of the public lands, and here no costs in regard to past surveys will be exacted. When sites are upon *unsurveyed* land, it will be necessary, after the extension thereto of the public surveys, to close those lines upon the exterior limits of the town site.

6th. The aforesaid act of 2d March, 1867, it will be observed, stipulates that there shall be conceded, where the number of inhabitants is one hundred and less than two hundred, not exceeding three hundred and twenty acres; where the population is more than two hundred and less than one thousand, not exceeding six hundred and forty acres; and where the inhabitants number one thousand and over, not exceeding twelve hundred and eighty acres; and for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres.

All military and other reservations of the United States, private grants, and valid mining claims, are excluded from the operation of these town-site laws.

7th. In any Territory in which a land-office may not have been established, the declaratory statements provided for in the foregoing acts may be filed with the Surveyor-General of the proper district.

Very respectfully,

JOS. S. WILSON, *Commissioner*.

DEPARTMENT OF THE INTERIOR,

23d September, 1868.

Approved:

W. T. OTTO, *Acting Secretary*.

An act for the relief of the inhabitants of cities and towns upon the public lands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That whenever any portion of the public lands of the United States have been or shall be settled upon and occupied as a town site, and therefore not subject to entry under the agricultural pre-emption laws, it shall be lawful in case such town shall be incorporated, for the corporate authorities thereof, and if not incorporated, for the judge of the county court for the county in which such town may be situated, to enter at the proper land-office, and at the minimum price, the land so settled and occupied, in trust for the several use and benefit of the occupants thereof, according to their respective interests; the execution of which trust, as to the disposal of the lots in such towns, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory

in which the same may be situated: *Provided*, That the entry of the land intended by this act to be made shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a town site under this act shall be filed with the register of the proper land-office, prior to the commencement of the public sale of the body of land in which it is included, and that the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States. If upon surveyed lands, the entry shall, in its exterior limit, be made in conformity to the legal subdivisions of the public lands authorized by the act of the twenty-fourth April, one thousand eight hundred and twenty; and where the inhabitants are in number one hundred and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred and less than one thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand and over one thousand, shall embrace not exceeding twelve hundred and eighty acres: *Provided*, That for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed: *And provided further*, That in any Territory in which a land-office may not have been established, declaratory statements, as hereinbefore provided, may be filed with the surveyor-general of the surveying district in which the lands are situate, who shall transmit said declaratory statement to the General Land-Office: *And provided further*, That any act of said trustees, not made in conformity to the rules and regulations herein alluded to, shall be void; effect to be given to the foregoing provisions according to such regulations as may be prescribed by the Secretary of the Interior: *And provided further*, That the provisions of this act shall not apply to military or other reservations heretofore made by the United States, nor to reservations for light-houses, custom-houses, mints, or such other public purposes as the interests of the United States may require, whether held under reservations through the land-office, by title derived from the Crown of Spain, or otherwise: *And provided further*, That no title shall be acquired, under the provisions of this act, to any mine of gold, silver, cinnabar or copper.

Approved March 2, 1867.

An Act to amend an act entitled "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March two, eighteen hundred and sixty-seven.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the inhabitants of any town located on the public lands of the United States may avail themselves, if the town authorities elect so to do, of the provisions of the act of March two, eighteen hundred and sixty-seven, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands:" *Provided*, This act shall not prevent the issuance of patents to persons who have made, or may make, entries, and elect to proceed under existing laws: *And provided, further*, That no title under said act of March two, eighteen hundred and sixty-seven, shall be acquired to any valid mining claim or possession held under the existing laws of Congress: *Provided, also*, That in addition to the minimum price of lands included in any town site entered under the provisions of this act,

and "An act for the relief of the inhabitants of cities and towns upon the public lands," approved March two, eighteen hundred and sixty-seven, there shall be paid by the parties availing themselves of the provisions of said acts all costs of surveying and platting any such town site, and expenses incident thereto, incurred by the United States, before any patent shall issue therefor.

Approved June 8, 1868.

An Act "making appropriations for the current and contingent expenses of the Indian Department," &c.

"Be it enacted," &c., * * * *

OSAGES.

* * * *

"Provided, That the laws of the United States relating to town sites be extended over all the lands obtained of the Osage Indians in the State of Kansas."

* * * *

"Approved March 3, 1871."

See Part II., No. 70, Sec. 2. Removal of Flathead and other Indians from the Bitter Root Valley, Montana.

"Town sites in said valley may be reserved and entered as provided by law."

No. 545.

Proceedings under the Town-Site Act of March 2, 1867.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., June 29, 1874.

REGISTER AND RECEIVER, *Lowell, Neb.*

GENTLEMEN:—In reply to the several questions in your letter of the 19th inst., relative to town sites, I have to state:

1st. The filing or entry must be made by the mayor or other corporate authorities if the town be incorporated, and if not, by the proper county judge; and in either case, "in trust for the several occupants, according to their respective interests."

2d. After the issue of patent, this office has nothing to do with the disposal of the lots, this being conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same is situated. In the absence of a State law, there is no United States law on the subject.

3d. Less than 100 inhabitants can make an entry through the proper party, as decided by the Hon. Secretary of the Interior in the Springville, Montana, case, July 8, 1871.

4th. There is no law for changing a filing covering a town site into a trading post.

The other questions in your letter will claim the attention of this Office when presented in an actual case.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 546.

TOWN OF FOUNTAIN GREEN.

Application for additional entry rejected, as only one entry is allowed under the act of March 2, 1867.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., July 13, 1874.

REGISTER AND RECEIVER, *Salt Lake City, Utah Ty.*

GENTLEMEN:—The register's letter of the 22d ult., enclosing the application of George Peacock, probate judge, for an additional entry in the town site of "Fountain Green," has been received.

In reply, I have to state that said town site having made cash entry No. 329, covering certain tracts in townships 14, R. 2, and 14, R. 3, and said entry having been patented, the parties in this case are precluded from making an additional entry of other lands under the act of March 2, 1867. The application is therefore rejected, and you will advise the parties accordingly.

Respectfully,

S. S. BURDETT, *Commissioner.*

No. 547.

TOWN OF SPRINGVILLE v. BAYLISS.

Claim under the Acts of March 2, 1867, and June 8, 1868.

Held—That Bayliss was not entitled to pre-empt, he having made his settlement for the purpose of trade and not agriculture.

Held also—That a town containing less than one hundred inhabitants is entitled to enter the land *actually occupied*, and no more, but not exceeding three hundred and twenty acres.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, July 8, 1871.

SIR:—I have considered the case of *Town Site of Springville, Montana Territory v. John Bayliss*. Land in controversy N. E. $\frac{1}{4}$ of N. W. $\frac{1}{4}$, and N. W. $\frac{1}{4}$ of N. E. $\frac{1}{4}$ of Sec. 23, T. 7 N., R. 9 E., Helena, M. T. Claim for town site is made under the provisions of the Act of March 2d, 1867, (14 Stat., 541,) and June 8, 1868. (15 Stat., 67.)

Filing made December 2d, 1869.

John Bayliss claims under the general pre-emption laws, having filed D. S. on the land in controversy, January 9th, 1869, alleging settlement August 10th, 1867. At the hearing before the local officers, Bayliss appeared by attorney and offered to cross-examine the witnesses for the town. This was refused by the local officers, until he should deposit an amount of money sufficient to cover half of the estimated expense of the investigation. He did not deposit the money, cross-examine the witnesses or offer any evidence of his own, but excepted to the ruling above referred to.

This exception was on appeal from the decision of the local officers in favor of the town-site, sustained by the Commissioner of the General Land-Office, who decided that as Bayliss filed his D. S. before that of the Probate Judge on behalf of the town, the total expense of the investigation should be borne by the town. The decision of the Commissioner was adverse to the claim of the town, on the ground that there was no provision in the acts under which it claimed for the entry of land for the benefit of a less number than one hundred, and

that the evidence showed there were only fifty or sixty persons on the land in controversy.

From this decision the town appeals.

The evidence taken at the examination shows the following facts: At the time Bayliss settled on the land, in June, 1867, it was already occupied, several houses having been erected upon it.

From that time until the date of the examination, it was continuously occupied for the purpose of trade.

At the time of the hearing there were some twenty-five or thirty houses on the land, including two stores, one hotel, a doctor's office, blacksmith's shop, livery stable, two saloons, &c.

Four or five witnesses testify to the fact that Bayliss has been engaged in trade since his first settlement on the land, and has not to their knowledge ever cultivated in any way any portion of the land claimed. Bayliss is clearly not entitled to enter the land, it being "actually settled and occupied for purposes of trade and not agriculture."

I think the Commissioner erred in the construction he gave to the act of March 2, 1867. (14 Stat. 541.)

That portion of the act which is material to the present inquiry, reads as follows:

"That whenever any portion of the public lands of the United States have been or shall be settled upon and occupied as a town site, and therefore not subject to entry under the agricultural pre-emption laws, it shall be lawful in case such town shall be incorporated, for the corporate authorities thereof, and if not incorporated, for the judge of the county court for the county in which such town may be situated, to enter at the proper land-office and at the minimum price, the land so settled and occupied, in trust for the several use and benefit of occupants thereof according to their respective interests; the execution of which trust, as to the disposal of the lots in such town, and the proceeds of the sales thereof, to be conducted under such rules and regulations as may be prescribed by the legislative authority of the State or Territory in which the same may be situated: *Provided*, That the entry of the land intended by this act to be made, shall be made, or a declaratory statement of the purpose of the inhabitants to enter it as a town-site under this act shall be filed with the Register of the proper land-office, prior to the commencement of the public sale of the body of land in which it is included, and that the entry or declaratory statement shall include only such land as is actually occupied by the town, and the title to which is in the United States.

"If upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands, authorized by the act of twenty fourth April, one thousand eight hundred and twenty; and where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one thousand, shall embrace not exceeding six hundred and forty acres, and where the number of inhabitants is one thousand, and over one thousand, shall embrace not exceeding twelve hundred and eighty acres:

"*Provided*, That for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed."

The substance of this provision is that whenever "any portion of the public lands" has been or shall be occupied as a town site, it shall be lawful for the corporate authorities or the Probate Judge, as the case may be, to enter at the proper Land-Office, and at the minimum price, the land so *settled* and occupied in trust, &c.

This is clear and explicit. It gives the land actually occupied, and no more. It requires that the declaratory statement shall be filed before the public sale of the land, and that it shall include, "only such land as is actually occupied by the town, and the title to which is in the United States."

If the act stopped here, there could be no doubt of its construction. It would give the land actually occupied as a town site, with the qualification that "if upon surveyed lands, the entry shall in its exterior limit be made in conformity to the legal subdivisions of the public lands." But it contains another provision intended to qualify what has been stated, and that is in these words: "And where the inhabitants are in number one hundred, and less than two hundred, shall embrace not exceeding three hundred and twenty acres; and in cases where the inhabitants of such town are more than two hundred, and less than one thousand, shall embrace not exceeding six hundred and forty acres; and where the number of inhabitants is one thousand, and over one thousand, shall embrace not exceeding twelve hundred and eighty acres: *Provided*, That for each additional one thousand inhabitants, not exceeding five thousand in all, a further grant of three hundred and twenty acres shall be allowed."

This, in my opinion, is a limitation upon the quantity of land that may be occupied by town sites, and that quantity depends upon the number of inhabitants.

If one hundred, and less than two hundred, not exceeding three hundred and twenty acres; if more than two hundred and less than a thousand, not exceeding six hundred and forty acres, and if one thousand, or over, not exceeding twelve hundred and eighty acres.

If less than one hundred, then the land *actually occupied*, but of course limited to three hundred and twenty acres, as that is the largest amount that a town of one hundred inhabitants can obtain, and it is not to be presumed that Congress intended to grant a town of less than one hundred more than was granted to a town containing one hundred inhabitants.

It follows from this construction that a town containing less than one hundred inhabitants is entitled to the provisions of this act. The precise number necessary is not fixed by statute, and I think for good reason. There is no good reason why ninety persons may not form a town as well as one hundred. More depends upon the character of the improvements, perhaps, than upon the number of persons. If in a place of seventy or eighty persons, every other one should own an improved lot, and the lots should be improved with private residences and such public buildings as are usually found in towns, as for example, hotels, stores, saloons, blacksmith-shops, school-houses and churches; it is very evident that such a place would generally be called and regarded as a town, and I think might be properly held to be a town.

Each case must stand upon its own facts.

The Commissioner decided that in contemplation of this law, no place containing less than one hundred inhabitants could be considered entitled to its benefits.

In this I think he erred. I think Springville is proved to be such a town as was intended by the act, and I advise that the decision of the Commissioner be reversed.

Very respectfully,

W. H. SMITH, *Assistant Attorney General*.

HON. C. DELANO, *Secretary of the Interior*.

Concurred in by Acting Secretary B. R. Cowen, July 8, 1871.

No. 548.

TAHOE CITY v. HUNTINGTON, ET AL.

Settlements made on land selected for a town site are not subject to pre-emption. "Selected" means any appropriation of the public lands by a number of persons in the formation of a settlement for mutual aid, assistance and in view of the future creation of a town. Lands settled on for the purpose of trade and not agriculture are not subject to pre-emption. A less number than 100 inhabitants is sufficient to obtain the benefits of the act.

Opinion of Assistant Attorney-General, dated July 24, 1871. Concurred in, July 28, 1871, by the Secretary.

No. 549.

SLOSSEN v. PRICE AND SALT LAKE CITY.

Land occupied for the purposes of trade and not agriculture cannot be pre-empted.

Land selected as the site for a city is not subject to pre-emption.

Construction of the act of 1867 as to occupancy of the entire tract: If the population exceeds 100 they may enter more than is actually occupied.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

WASHINGTON, August 5, 1871.

SIR:—I have considered the case of *John J. Slossen v. Edward Price and Salt Lake City*.

The land in contest is the N. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$, S. E. $\frac{1}{4}$, N. E. $\frac{1}{4}$, lots 1 and 2 Sec. 15, T. 1 S., R. 1 E., Salt Lake City, Utah.

John J. Slossen, July 12th, 1869, filed a declaratory statement on this land, alleging settlement April 18, 1866. November 27th following he filed an amended declaration, correcting an error in the first. Edward Price, July 29th, 1869, filed a declaratory statement claiming lot 1, alleging settlement in the year 1866.

These claims are resisted by the inhabitants of Salt Lake City, through the Mayor, Daniel H. Wells, who, on the 12th day of July, 1869, filed an affidavit setting forth that the land in controversy was included in the city plat, and was actually occupied as a town site. The finding of the local officers in favor of Slossen was reversed by the Commissioner, February 17th, 1871, who held that, as the land in controversy had been selected as a part of the site of Salt Lake City, and had been laid off in blocks and streets prior to the settlement of either Slossen or Price, the pre-emption claim should be rejected. From this decision Slossen has appealed.

On the 17th day of February, 1866, John J. Slossen purchased from one Runnelle half of a house situated on the land in controversy,

paying in consideration therefor \$175. The other half of the house was purchased at the same time by John C. Shepperd, then and afterwards a partner of claimant.

Runnelle held the house under a lease from the city. Slossen, with Shepperd, his partner, built a brewery on the land, about sixty rods from the house, in size 18x24 feet, with several extensions and additions. He also dug a ditch to convey water to the house and brewery. In June, 1866, he built a small addition to the house for a cook-shanty in summer and wood-shed in winter, and about the same time put up an awning or porch to shade the door. The entire cost of house and brewery was \$2,000.

During the summer of 1866 he kept a kind of restaurant in a portion of his house, selling groceries and liquors to the soldiers in the vicinity.

In September or October of that year, complaint was made before an alderman of the city, charging him with violating a city ordinance prohibiting the sale of liquor. Officers with a warrant from the alderman visited the house, destroyed the bar and liquors, and took claimant into custody. He was released, however, and continued to reside in his house until May, 1867, when he sold the same for \$100. At the time of sale he asserted his right to the land, and published a notice to that effect in a newspaper published in said city.

He never again occupied the house, which was soon afterwards torn down, nor made any further improvements on the tract. He swears, however, that he quit the land because he was compelled to do so by the Mormon authorities, and that the reason he never erected any other building was because he knew any improvements he might make would be destroyed. At the expiration of the lease to Runnelle by the city, claimant accepted a renewal of it, asserting, however, at the time, his own right to the land. He appears never to have cultivated any portion of the tract claimed.

Edward Price during the summer of 1866 purchased from the city a lot upon the tract in controversy, and in 1867 built a house with two rooms, moved into it, and also built a rock stable, hen-coop, pig-pen and a shed. In 1868 he fenced four acres of ground, and set out three hundred fruit trees. He has resided continuously on the land from the date of his purchase from the city.

It is admitted by all parties to the controversy that the land in dispute was surveyed into streets and blocks in 1857; that the blocks were subdivided into lots in 1866, and that there are now twelve residences upon it; also, that at the time of trial Salt Lake City contained twenty thousand inhabitants. A careful examination of the whole case convinces me that the claims of Slossen and Price should be rejected. I think there are several fatal objections to each.

First. It is attempted to enter under the pre-emption law a lot or parcel of land actually settled and occupied for the purposes of trade and not agriculture. This is expressly prohibited by the act of 1841. The evidence shows that at the time application was made to enter the tract in controversy it was within the recognized limits of Salt Lake City. Twelve houses were upon it, built on land purchased from the city, and occupied not for agricultural purposes but as town residences. It is also shown that Slossen's possession was never that of an agricultural claimant. He built and evidently intended to operate a brewery. His business was that of a restaurant-keeper, a portion of his house, furnished with a bar, being used as a saloon. I think it is

clearly shown that he occupied the land and intended to occupy it exclusively for the purposes of trade and not agriculture; and it appears that the tract claimed by him, a portion of which is covered by the declaratory statement of Price, is within the well-known limits of a settlement established in great part for the purposes of commerce. Land so situated and occupied cannot be entered under the pre-emption law.

Second. The good faith required by the pre-emption law is not shown by either claimant.

Slossen purchased a portion of a house held under a lease from the city. He denies under oath that he knew this, but when called upon by the city authorities to do so, he accepted a renewal of the lease.

I do not see how the statement, made at the time of the execution of the lease, that he claimed the land as his own, can affect, to any extent, the legal effect of the lease. A man really believing he had a good claim to a tract of land would hardly accept a lease of it from another, whose right he disputed, merely to retain possession. He would rather suffer a forcible ouster. The former course would acknowledge a superior claim, while the latter would most emphatically deny it. Forcible ejectment from the land he rightly held, would not have prejudiced in any way his claim, while the acceptance of the lease was, in my opinion, notwithstanding his declaration, a legal admission of the superiority of the claim of the city.

The total failure to make any agricultural improvements, the occupation of the land exclusively for the purposes of trade, and the sale of his house and virtual abandonment of the tract, are all evidences of his want of good faith as a pre-emptor.

It is claimed that the sale of his house was compulsory, and that the fear of having his improvements destroyed prevented him from again attempting to occupy the land.

This conclusion, however, is not justified by the evidence. It is shown that he violated an ordinance of the city by selling liquor, that a complaint by affidavit was made before an alderman, a warrant issued, policemen visited his house, destroyed his liquor and took him into custody. All this was in strict conformity with the law of the City and Territory. He was bound to know the law and respect it, and if in violating its provisions he incurred a penalty, he should not be allowed to allege that fact to show that a well-grounded fear compelled him to abandon his land. No acts of violence are anywhere shown, except the execution of this warrant, and that was according to due process of the law. That the claimant was compelled to sell his house at all, or that he was compelled to sell it to any particular person or one of a particular class of persons, is denied under oath by Groo, City Agent in 1866, whose evidence on this point is supported by that of Robert Campbell, the man who bought the claimant's house. Campbell swears that Groo told claimant in his presence, that he would not be restricted in the sale of the house. Campbell further testifies that claimant asked him (Campbell) to buy the house. It is also shown that the city lots were disposed of to Gentiles and Mormons alike, without any distinction, upon the payment of a small sum necessary to defray the expenses of survey. The only restriction which appears to have been placed upon claimant was that he should obey the provisions of law relative to the sale of liquor. He was obliged to lease from the city in order to keep a restaurant, and was obliged to conform to muni-

cial regulations relating to the sale of liquor. Such a state of facts was not sufficient in my opinion to cause a well-grounded fear, and justify him in abandoning the land he claimed. Price purchased all the land he holds of the city, and always acknowledged its claim. His case is entirely without evidence of good faith as a pre-emptor.

Third. The land claimed had been "selected as the site for a city," and therefore was not subject to pre-emption. It is admitted that this land was surveyed into streets and blocks in 1857, that the blocks were sub-divided into lots in 1866, and at the time of the trial, twelve dwelling houses were found upon it.

The town plat was filed July 12th, 1869.

Pre-emption settlements on unsurveyed land are allowed by law, but no steps to acquire a perfect title can be taken until after survey. Then the claim relates back to this time of settlement, and if the land is not by law reserved, the first settler is entitled. Now it is shown that when Slossen purchased the house in 1866, the land claimed, although surveyed into blocks, was not occupied by town improvements. The construction of the town-site act of 1844, given in numerous decisions, is to the effect that selection without actual occupation does not remove the land from pre-emption. (Lester, 493, 494, 496.) It is to be noticed, however, that these decisions are all in cases arising under the act above referred to, which is now superseded by the act of March 2d, 1867. (14 Stat., 541.) If this contest had arisen between the city and Slossen in 1866, and his claim in other respects had been good, the mere fact that the land had been surveyed into streets and blocks would not have been allowed to defeat his claim, for under the then existing laws and decisions, occupancy must have followed such survey, in order to have reserved the land from pre-emption settlement. But before he was in a position to assert his claim, the lapse of time had brought about changes in the law, as well as in the fact of occupancy. On the day he was first enabled to take advantage of the pre-emption law, by filing his declaratory statement, the land was not only "selected" as a town site, but actually occupied as such, and a new law had been passed under which the town claimed. The two acts differ very materially. That of 1844, in express language, provided that the entry should include only land "actually occupied," while that of 1867 provides for the entry of the land actually occupied and settled, where the number of inhabitants is less than one hundred, and where the number of inhabitants exceeds one hundred, then more than is occupied, if necessary to make up a certain amount proportioned by the act to the actual number. I do not think that under the last act it is necessary that all the lands to which a town exceeding one hundred inhabitants may be entitled, should be actually occupied in order to remove it from pre-emption. Persons settling in the immediate vicinity of a town or city, or on unsurveyed land, must take the risk of the land falling within the town site, or subsequently and before survey, being occupied as such by a sufficient number of persons to enter under the act. When an entry is attempted under the pre-emption act the question arises, whether the land is *at that time* selected as a town or city site.

The language of the act of 1841 is plain: "No portion of the public lands which have been selected as the site for a city or town * * * shall be liable to entry under the provisions of this act," that is, *selected at the time the pre-emption application is made.*

To say that it means a selection made prior to the settlement of the

claimant, when in point of fact it has been made before he asserts his claim, would be virtually to disregard the provision of the statute altogether, for it says land so selected shall not "*be liable to entry*" by a pre-emptor.

Under the act of 1867, the selection need not, in my opinion, be accompanied by actual occupancy of the entire surveyed site. If a tract claimed by pre-emption is within the surveyed limits of a town site occupied so far as found necessary by an organized community having public buildings, places of trade and commerce, churches, school-houses and dwellings, it is "selected" within the meaning of that act. In the argument for the claimant great stress is laid upon the alleged inability of the city to enter the land, even on failure of the pre-emption claim. It is alleged that the city cannot take, even under its special act of July 1st, 1870, all the land claimed and included in its surveys. Whether this is so or not does not appear from the record, and need not be determined now. I recommend that the decision of the Commissioner be affirmed.

Very respectfully,

W. H. SMITH, *Assistant Attorney-General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by Acting Secretary B. R. Cowen, August 9, 1871.

No. 550.

ALLMAN v. THULON.

Claim under the act of July, 1 1864.

The acceptance of a lease to premises claimed, does not conclude the claimant from showing his real purpose in accepting the lease.

The leasing of public lands is of no validity, and not recognized by the laws of the United States. Local laws are of no force against the United States, unless they have been adopted into the United States Statutes.

Definition of the terms "settler" and "actual settler."

The terms "actual settler" and "actual resident" are not synonymous.

DEPARTMENT OF JUSTICE,

OFFICE OF ASSISTANT ATTORNEY GENERAL,

Washington, Nov. 7th, 1871.

SIR:—I have considered the case of *John Allman v. Bertha Thulon*, involving the right to enter Lot 2, Block 145, Virginia City, Nevada.

The claims of both parties in this controversy arise under the town-site act of July 1, 1864. (13 Stat., 344.)

This statute is one of general application, its object being to provide for the disposition of a certain amount of unappropriated Government land at public and private sale, and pre-emption, to parties who have founded or may found cities or towns. It provides that where parties have founded or may desire to found cities or towns, it shall be lawful for them to file with the Recorder of the County where the land is situated, within twelve months from the establishment of such city or town, a plat of the same, showing streets, squares, blocks, lots and alleys, the size of the same, with measurements and area of each municipal sub-division, the plat and statement to be accompanied by the sworn testimony of two witnesses that such city or town has been established in good faith; that at any time after filing such map, statement and testimony in the General Land-Office, it shall be lawful for the

President to cause the lots embraced within the limits of such city or town to be offered at public sale, and that such lots as may not be disposed of at public sale, shall thereafter be liable to private entry.

In the second section of said Act, is found the following proviso:

"Provided, That any actual settler upon any one lot, as aforesaid, and upon any additional lot in which he may have substantial improvements, shall be entitled to prove up and purchase the same as a pre-emption at said minimum, at any time before the day fixed for public sale."

The tract in controversy is within the limits of Virginia City, Nevada, a city established under the provisions of this act, and at time of the hearing before the local officers, it had been improved by the erection of a livery stable at an actual cost of \$4,400.

Both parties claimed before the local officers and the Commissioner to own the improvements, and consequently the possession of a right under the proviso above quoted to enter the lot as a pre-emption.

The decision of the local officers was in favor of Bertha Thulon; that of the Commissioner rejected both claims. From the decision of the Commissioner, Allman has appealed to the Secretary. Thulon has not appealed.

The claim of Allman was rejected by the Commissioner upon two grounds:

1st. On the ground that improvements on the lot in controversy were not the property of Allman, having been built by a copartnership firm of which he was a member, while it had a lease of the land from Bertha Thulon, containing a stipulation, that all buildings erected thereon should, at the expiration of the lease, revert to the lessor.

2d. On the ground that he was not an actual resident of Virginia City.

The construction given by the Commissioner to the proviso of the second section requires, that an applicant to enter an "additional lot," on the ground of substantial improvement, shall be an actual resident of the city, on a lot claimed by him as an "actual settler." The term "actual settlers," seems to be construed by the Commissioner as equivalent to *actual residents*.

Bertha Thulon having waived her right of appeal, it is only necessary to examine into the facts relating to her claim so far as they tend to prove or disprove the title of Allman to the improvements upon lot 2.

She on the 5th day of February, 1862, obtained a possessory right to the tract in controversy, under the local laws of Nevada, by purchase for a valuable consideration from one J. B. Lester, attorney for R. C. Hardy and John D. Levinson. Hardy and Levinson had purchased from parties claiming under Wm. D. Bibb, who made the first recorded conveyance of the tract, April 25th, 1860.

On the 30th day of May, 1863, Thulon executed a lease of the premises to Richard Allman and A. R. Coryell, reserving a rent of one hundred and fifty dollars per month in advance. This lease contained a stipulation that all buildings and improvements erected upon the premises should be at the sole cost and expense of the lessees, and that at the expiration or sooner termination of the lease, such improvements should revert to the lessor. It appears that Coryell disposed of the interest he acquired under this lease, and that the same was afterwards purchased by one C. H. Light, who commenced with Richard Allman

to build a livery stable. Richard Allman, not having money to carry on the work, was succeeded by his brother, the claimant, who with Light, built the stable and commenced business.

Light swears that he purchased the lease from one Remington, that he and John Allman built the improvements, that he never showed the lease to Allman, and that he did not think he knew its contents, only that it was a lease for three years.

Allman continued with Light in the livery business until 1865, when his wife died. He then sold his share in the horses and carriages to one Haviland, and went with his children to Pennsylvania, where he put them in school. He has since been frequently in Virginia City, coming and going as his business, that of mail contractor, required or allowed. He swears that he owns a private residence in the City, where he lived from 1863 to 1865, that he left it when his wife died, that he has since 1863 had no other residence than Virginia City, and that he now considers it his home.

He has recently purchased all of Light's interest in the improvements erected by them in 1863.

Sometime in the Spring of 1860, before the streets and blocks of the city were regularly laid out, Allman selected for his own use the tract of land, now subdivided into Lots 2 and 3 of Block 145. He put up a small barn on Lot 2 for a livery stable. He also had a tent upon Lot 3, in which he slept. He also partly fenced the tract. Several witnesses testify, that at this time there were no other improvements upon the land. The testimony on this point, however, is very conflicting, several witnesses also testifying, that prior to this time it had been improved, by a cabin erected by one of the former owners, under the possessory title, originating with Bibb. Allman occupied the tent and used the barn for some time. He then went to California, leaving the barn in possession of his brother, and the tent in possession of two men. These two men swear that they were forcibly driven from the land. When Allman returned from California in 1863, he did not find either his tent or barn upon the land. He then went into partnership with Light, taking the place of his brother.

Allman swears that at the time they commenced to build the barn, he claimed the land as his own; that he did not know anything about the lease from Bertha Thulon to Richard Allman and A. B. Coryell; that he never saw it, and never recognized it; that he did not know anything about its contents or terms; that he paid no rent and does not know where the money paid by Light for rent came from; that he heard that Light was paying rent, but that he never talked to him about it, and had no contract with him respecting it. He swears that he has always claimed the land in his own right.

Light also swears that in 1863, when they built the barn, Allman claimed the land.

I differ with the Commissioner in his conclusion that the improvements on the land are not the property of Allman.

The testimony, it is true, is in many respects conflicting and unsatisfactory, but on the whole I think it proves that Allman has claimed the land in his own right since 1860, and of course with it all the improvements, except as they were affected by Light's interest in the partnership. I am also of opinion that the testimony shows a good title at the present time in Allman to all of such improvements.

The Commissioner has in this case considered the existence of a lease

to the claimant of the land claimed as a fatal objection to a confirmation.

This is, in my opinion, laying down the rule too broadly. When a person enters into possession of land under a lease from another, it is a strong circumstance to show that he does not intend to claim the land as his own, but holds his possession under the right of such other person, and not under his own right. It has, therefore, very properly been held in many cases, that such a lease, and possession under it, are sufficient evidence of a want of intention to appropriate the land. But it does not follow in every case that a person cannot accept of a lease to premises which he really claims as his own and intends to appropriate. If he has been in possession prior to the lease, under a claim of his own, and has been forcibly ejected, and afterwards accepts of a lease for the sole purpose of remaining in possession until such time as he can perfect his title under the law, it does not seem to me that he should be concluded from showing the real purpose he had in view. The question is one of intent, and the *actual* intent should be shown.

A lease of public lands is of no validity and is not recognized by the laws of the United States. The public lands belong to the United States until they are appropriated in some manner provided by its laws. The local laws have in many cases undertaken to regulate their possession until such time as title is passed by the laws of the General Government, but such local laws are of no force as against the United States, unless they have been adopted into the statutes of the United States. This has been done in regard to mining claims.

In the present case John Allman did not join in the lease. He was not an original party to it. He seems studiously to have avoided recognizing it in any way. He paid no rent under it. He probably knew of the fact that there was such a lease in existence, but he acted as though it had never been made.

I am of opinion that under the facts of this case the lease is not a bar to his claim.

I am also of opinion that the Commissioner erred in his construction of the proviso to the second section. The language is "Any actual settler upon any one lot, as aforesaid, and upon any additional lot in which he may have substantial improvements." The plain meaning of this is that any person who is an "actual settler" on any one lot may enter it, together with one additional lot, upon which he is an "actual settler," and upon which he may have valuable improvements. This, it seems to me, is the only construction of which the language is susceptible.

Now, who is an actual settler?

The Commissioner seems to have considered the word as synonymous with *actual resident*.

The word "settler" has a certain well defined, technical meaning, as used in the land laws of the United States. A person is a settler, who, intending to initiate a claim under any law of the United States, for the disposition of the public domain, does some act, connecting himself with the particular tract claimed, said act being equivalent to announcement of such his intention, and from which the public generally may have notice of his claim. Such act constitutes "a settlement," and it may be by going upon the land, and cutting down trees, building a house, fencing the tract, &c., &c.

An "actual settler" is one who personally makes a settlement.

Attorney General Butler, in his opinion of March 29th, 1837, giving a construction to the words "settler" and "occupant" as the same occur in the pre-emption acts of 1830 and 1834, says:

"I regard those persons and those only as settlers or occupants within the meaning of the law who either:

"1st. Personally cultivate and reside on the public lands.

"2d. Personally use and manage the public lands."

And again, "*I have not supposed that actual residency or inhabitancy on the land was indispensable.*"

In the pre-emption act of 1841, the word settler is also used in the same sense, and with the same meaning. It provides for an entry of land by any qualified person who shall make "*a settlement in person*" and "*who shall inhabit and improve the same.*" Two things are required, *personal settlement* and *inhabitancy*, and *cultivation*. The "settlement" and inhabitancy must obviously be two different things.

On this point Attorney General Mason, in his opinion of April 25th, 1846, says:

"Settling, inhabitancy and improving are all used as circumstances to be performed and proved, but *they are not synonymous in their meaning*. From the moment, therefore, he (claimant) enters in person on land open to such a claim *animus manendi*, or rather with the intention of availing himself of the provisions of the act referred to, and does any act in execution of that intention, he is a settler."

In my opinion, the technical meaning of this word, as used in the land laws of the United States, is, by these and other decisions, well settled. It must consequently be given this meaning, whenever it occurs in an act of Congress, unless it is shown that Congress intended to use it in a different sense. There is nothing in the act under consideration, to show that Congress intended to use the word in any other sense, than that which it had acquired by long usage and repeated construction; consequently the established meaning of the word must be given it where it occurs in the proviso of the second section.

In my opinion, any person, qualified as a pre-emptor and being an "actual settler," within the meaning of the word as given above, is entitled under the proviso, to purchase one lot so settled upon, together with an additional lot, upon which he is also an actual settler, and upon which he has substantial improvements.

Allman, I think, is shown by the evidence to be an actual settler, and the owner of the improvements on Lot 2.

I therefore recommend that the decision of the Commissioner be reversed, and that Allman be allowed to enter such lot at the minimum price established by the Act.

Very respectfully,

W. H. SMITH, *Asst. Atty. General.*

HON. C. DELANO, *Secretary of Interior.*

[As will be seen from the decision below, the Secretary did not differ from the Assistant Attorney General as to the law, but he thought there was not sufficient in the case to warrant a reversal of Commissioner Wilson's decision.—ED.]

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 7th Dec., 1871.

SIR:—I have carefully considered the papers and the elaborate

argument of counsel for Allman in the case of *John Allman v. Bertha Thulon*, involving the right to Lot 2, Block 145, Virginia City, Nevada.

There were two hearings of the case, in each of which the local officers decided in Thulon's favor. Your predecessor rejected both claims, for want of performance of the conditions required by the town-site act of 1 July, 1864, under which the contest arose.

I do not deem it necessary to repeat the facts, which are clearly stated in the decisions of your Office. While not entirely clear in my own mind as to the question of law involved in the case, I cannot perceive sufficient grounds for reversing the decision of your Office. It will therefore stand, and the papers transmitted with your letter of 16 December last are herewith returned.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 551.

GRAY v. TOWN OF DEEVERSVILLE.

There must be actual occupancy for purposes of trade of the tracts filed upon under the town-site acts, to exempt the land from the operation of the pre-emption laws.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., Dec. 7, 1872.

REGISTER AND RECEIVER, *Cawker City, Kan.*

GENTLEMEN:—I am in receipt of your letter of September 20th ult., enclosing affidavits and other papers in the matter of the appeal of Frank Gray from your ruling of the same date, rejecting his (Gray's) application to file his D. S. on the S. $\frac{1}{2}$ N. E. $\frac{1}{4}$ and N. $\frac{1}{2}$ S. E. $\frac{1}{4}$, sec. 33, T. 4, R. 20, for the reason that on August 30, 1872, E. C. Benton, probate judge, had filed for said tracts in trust for the inhabitants of the town of "Deeversville."

Mr. Gray alleges a personal settlement on said tracts June 25, 1872, and applied to file in time. Mr. Gray also alleges that no improvements have been made on said land except by himself, and that said town site did not claim the same until long after his settlement thereon.

It is held by this Office that at the time of filing for lands under the town-site acts there must be an actual occupancy of the same for purposes of trade in order to make the filing; such a selection as would exempt the lands from the operation of the act of 1841.

Your decision in this case is therefore reversed, and you will allow the filing of Gray to date September 20; and upon the application of either Gray or the town authorities to prove up, you will notify all adverse claimants as usual in such cases.

This ruling will apply to all similar cases coming before your office.

Respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 552.

VAN ETTEN v. KNIGHT.

The president of a town company filed his D. S. under the pre-emption act for land embraced in a town site filing, and resided in a house built by the company. As the land was selected as a town for speculative purposes, his pre-emption claim was rejected.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., March 21, 1874.

REGISTER AND RECEIVER, *Lowell, Nebraska.*

GENTLEMEN:—This office has examined the testimony in the Beatrice contested case of *David Van Etten v. James Knight*, involving the right to the E. $\frac{1}{2}$, S. W. $\frac{1}{4}$, and W. $\frac{1}{4}$ S. E. $\frac{1}{4}$, sec. 25, T. 2 N., R. 15 W.

Mr. Van Etten filed his D. S. 137, December 10, 1870, alleging settlement five days previous.

Mr. Knight entered said tracts per homestead entry No. 5, 353, June 10, 1871.

C. J. Vanlaningham, probate judge, May 16, 1871, filed D. S. 314, for these and other tracts, in trust for the inhabitants of Franklin City.

It appears that said land was selected as a part of the town of Franklin, and laid off into lots, blocks, streets, &c., by Mr. Van Etten, who was president of the town company, and that he (Van Etten) sold shares in the town company, and was present at a public sale of the lots in the city of Omaha.

He made no personal residence on said land until May, 1871, and he then occupied a house erected by the town company. The evidence of bad faith on the part of Van Etten is sufficient, and his pre-emption claim to said land is hereby rejected.

There is nothing to show that the tracts in question have been occupied for municipal purposes, the same having been selected by Van Etten and other citizens of Omaha, and laid out in lots for speculative purposes.

The homestead entry of Knight will remain intact.

Advise the parties in interest of this decision, and allow sixty days from the date of your notice for appeal.

Notify this Office of the action taken in the premises, and refer to this letter as "G" by date.

Respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 553.

ATCHISON, TOPEKA & SANTA FE R. R. CO. v. KING CITY.

Unless the land embraced in a town-site filing, regularly made, is both "settled upon" and "occupied" for town-site purposes, the same will not be withdrawn thereby from the grant to a railroad company. The town-site act of 1867 does not authorize the "president" of a town-site company to make a filing in behalf of the inhabitants.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., April 28, 1874.

SIR:—I have examined the case of the *Atchison, Topeka, and Santa Fe Railroad Company v. The Town Site of King City*, involving title to certain tracts in sections 26 and 27, T. 20 S., R. 3 W., Salina, Kan-

sas, on appeal from your decision of September 5, 1873, awarding the land in contest to the Town-Site Company.

The railroad company claims, under the act of March 3, 1863, (12 Stat., 772,) all the land in section 27. The line of the road was definitely located September 23, 1871. Section 27 is within the limits of the grant in place.

The Town-Site Company claim under the act of March 2, 1867, (14 Stat., 541.) On the 13th day of May, 1871, one E. L. King, claiming to be "president of the King City Town Company," filed under this act, on behalf of said company, a declaratory statement for the land in contest, alleging settlement May 11, 1871.

On the 14th day of December, 1872, the probate judge of the county in which the land is situated made proof and entered the land for the benefit of the inhabitants, shown to number, at that date, about one hundred persons. An application by said railroad company for the cancellation of said entry bringing the case to your attention on the 28th day of February, 1873, you ordered that a trial be had before the local officers. From the testimony then taken you find the state of facts recited in your decision.

The railroad grant does not include lands "settled upon and occupied," as a town site at the date of the definite location of the road. There can be no reasonable doubt that such was the general intentment and the legal effect of the acts of 1863 and 1867. It is only necessary, therefore, to inquire in this connection whether the testimony as submitted shows the land in contest to have been "settled upon and occupied as a town site" on the 23d day of September, 1871. I do not think that it does. It is shown that the tract in controversy was *selected* as a town site, and the exterior lines of the town surveyed, on the 11th day of May, 1871. It is also shown that the town was laid off into lots and blocks in August, 1871; but it does not appear that prior to the definite location, September 23, 1871, there were any buildings or any inhabitants upon section 27. Prior to that date four buildings were erected and a town well dug, but none of these, so far as shown, were upon the said section 27.

At the date of entry, fifteen months later, only five buildings were found thereon. The land in contest seems to have been "settled upon," but not "occupied" as a town site at the date named. It was not, therefore, according to the construction I give the two acts, excepted from the grant to the road.

I add, in passing, that the filing by the president of the company, in May, 1871, did not of itself operate as a reservation of the land. The act of 1867 does not authorize the "president" of a town-site company to make such filing, and in my opinion, even if such filing were regularly made, it would not withdraw the land from a grant of this character, unless the further requirements of law were fully complied with.

I therefore reverse your decision, and award the land in controversy, viz: E. $\frac{1}{4}$ N. E. $\frac{1}{4}$, E. $\frac{1}{4}$ S.E. $\frac{1}{4}$, section 27, to the railroad company, returning herewith the papers transmitted with your letter of July 14, 1874.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 554.

TURNER v. LANG AND COLBY.

Patents for town sites in mining regions excluded all mining claims, and parties owning placer claims therein may proceed to secure patent for their placer claims, notwithstanding the previous issuance of such town-site patent.

In such cases, a clause will be inserted in the mining patent, excluding all town property rights not belonging to the grantees.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., June 16, 1874.

REGISTER AND RECEIVER, *Stockton, Cal.*

GENTLEMEN:—With your letter of the 30th April last, you transmitted the papers in case of the application of Charles E. Lang and Alonzo Colby, for patent for the Fairview mine, California.

This application was filed in the local office on the 20th February, 1874.

The notices and diagrams were posted upon the claim and in the office of the register, for the full period of time required by law.

The notice was published in the *Stockton Independent* from the 21st Feb., 1874, to 22d April, 1874, inclusive.

The abstract of title shows that the Fairview quartz mine was located on the 14th March, 1871.

It also appears that the applicants have the record title to the premises described in the application.

The applicants also filed evidence tending to show that they have occupied and improved said mine in accordance with the local laws and Congressional enactments, from the date of said location to the present time, and that they have complied with the law in the matter of their application.

On the 21st April, 1874, S. S. Turner filed a protest against said application for patent. In his sworn statement, Mr. Turner alleges that he is the owner of a certain piece or parcel of land, situate within the exterior boundaries of the town site of Sonora, Cal., designated upon the official plat of said city, as block 29, lot 7.

Mr. Turner also filed a copy of a deed from the trustees of the city of Sonora to Samuel S. Turner for lot 7, block 29, the deed expressly stating "that no title shall be hereby acquired to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws of Congress." This deed is dated April 22, 1874, and was filed in the local office April 23, 1874.

The protestant filed a plat showing the relative situation of said mine and said lot 7, block 29.

Mr. Turner alleges under oath that the premises described in the application for patent are not "the same land as the claim which was originally located in March, A. D. 1871, but a different claim."

It appears from the records of this Office that patent issued for the town-site of Sonora March 20, 1874, in which a clause was inserted expressly providing "that no title shall be hereby acquired to any mine of gold, silver, cinnabar, or copper, or to any valid mining claim or possession held under existing laws of Congress."

From the foregoing it will be seen that the United States did not convey with said town site patent any mine of gold or silver, but on the contrary expressly excepted from such grant *all mines and valid mining claims or possessions.*

The same excepting clause is found in the deed from the trustees of said city to the protestant for said lot 7, block 29, and the protest filed by Mr. Turner cannot operate as a bar to the issuance of a patent to Messrs. Lang and Colby.

When patent issues for said mining claim a clause will be inserted therein "excepting and excluding, however, from these presents, all town property rights upon the surface, and there are hereby expressly excepted and excluded from the same all houses, buildings, structures, lots, blocks, streets, alleys, or other municipal improvements on the surface of the above-described premises not belonging to the grantees herein, and all rights necessary or proper to the occupation, possession, and enjoyment of the same."

You will inform all parties in interest, and acknowledge the receipt hereof.

Before Messrs. Lang and Colby can be permitted to make entry of said claim as surveyed, it will be necessary for them to submit satisfactory evidence showing that the premises described in said application are the same as those originally located by C. E. Lang *et al.* on the 14th March, 1871.

Very respectfully, your obedient servant,

S. S. BURDETT, *Commissioner.*

TITLE X.—INDIAN LANDS AND SCRIP.

I. OSAGE LANDS, KANSAS.

No. 555.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 26, 1871.

REGISTER AND RECEIVER, *Augusta, Kansas.*

GENTLEMEN:—It has been represented to this office that parties endeavor to speculate in the Osage Lands by making claims, then selling out and taking others.

It is also represented that during the temporary absence of *bona fide* settlers, either for the purpose of bringing their families, or while engaged in their calling of herdsmen, their claims are "jumped" by other parties, &c.

With a view to protect the interests and rights of *bona fide* claimants, you will therefore, 1st. Require of all parties an affidavit when filing that they have not, since the passage of the act of 15 July, 1870, for the disposal of said lands, sold their rights to, or voluntarily abandoned any tract of said Osage Lands, or settled upon, improved, or filed for any other tract of said lands, than the one designated in said filing; this affidavit you will also require when proof is made. 2d. Where in contests between adverse claimants, it is shown by the first settler that he had made a *bona fide* settlement, and that an absence from the claim was due to the reasons herein alluded to, you will give him the preference, provided he has in other respects complied with the requirements of our former instructions, giving, of course, to the adverse claimant the right of appeal from your action to this office.

Very respectfully,

See No. 27 $\frac{1}{2}$.WILLIS DRUMMOND, *Commissioner.*

No. 556.

SARAH P. NOBLE.

Osage Ceded Lands: She settled after ratification of the treaty. She cannot claim as a pre-emptor before the passage of the Joint Resolution of April 10, 1869, because the treaty forbids all homestead and pre-emption settlements. She cannot claim under the Joint Resolution, because it saves all vested rights, and the rights of the railroads had vested prior to its passage.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 23d Feb, 1872.

SIR:—I have considered the application of Mrs. Sarah P. Noble to enter, under the Joint Resolution of April 10th, 1869, (16 Stat., 53, Part II., No. 5,) the S. W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ of Section 9, the N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Section 16, and the N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ Section 17, T. 28 S., R. 18 E., Osage Ceded Lands, Humboldt, Kansas.

The land in Section 16 is claimed adversely by the State as school

land, and in Sections 9 and 17 by the M. K. and T., and L. L. and G. R. R. Companies.

From your decision of April 10, 1871, awarding all the land to Mrs. Noble, the M. K. and T. R. R. Company take an appeal as to that portion of the land claimed by them. The other parties have not appealed.

The land was surveyed May 9, 1867; the line of the railroad definitely located Jan. 7, 1868, and the withdrawal for railroad purposes made Feb. 4, 1868.

The evidence shows that Sarah P. Noble is the widow of Edward P. Noble, who died the latter part of April, 1868; that Mr. Noble settled upon the land in July, 1866, broke five acres, got out some logs for a house, and hauled some rails on the land; that from July, 1866, to the summer of 1867, he did not reside on the land; that in the summer of 1867 he broke ten acres more, cultivated fifteen acres in all, and lived during the fall in a tent on the land and gathered his crop; that in February, 1868, he built a house, and in April following moved into it with his family; that a few days thereafter he was taken sick and was removed from the land to Humboldt, where he was shortly followed by his wife, and where he died the latter part of the same month; that some time after his death Mrs. Noble returned to the land and, with the assistance of her brother, broke ten acres more, and fenced and cultivated in all thirty acres; that in the fore part of December, 1868, and while Mrs. Noble was absent from the land in Humboldt, her brother removed the house to his claim adjoining, and has since then used it as a stable; that she was not able to have a house built to replace the old one removed until December, 1869, when she had a new one built, and Jan. 3d, 1870, moved into it, and has resided there to time of trial, April 28, 1870; that in the interval between the removal of the old house and the moving into the new one she resided most of the time with her brother on land adjoining the disputed tract.

Mr. Noble had not settled on the land at the date of the treaty of Sep. 29, 1865, ceding the lands to the United States (14 Stat., 687,) and he is therefore not covered by the IV. article, which grants the privilege of purchasing a quarter section to qualified parties, who had settled at that date.

The land cannot be claimed as a pre-emption or a homestead, for such claims are expressly inhibited by the I. Article of the treaty.

The only possible claim to the land in this case, must be under the Joint Resolution of April, 1869. (16 Stat., 55.) This provides "That *any bona fide settler residing upon any portion of the Osage ceded or trust land, who is a citizen of United States, shall be, and hereby is, entitled to purchase the same in quantity not exceeding one hundred and sixty acres, at the price of one dollar and twenty-five cents per acre, within two years from the passage of this act, under such rules and regulations as may be prescribed by the Secretary of the Interior: Provided, however, That both the odd and even numbered sections of said lands shall be subject to settlement and sale as above provided: And provided further, That the sixteenth and thirty-sixth sections in each township of said lands shall be reserved for state school purposes, in accordance with the provisions of the act of admission of the State of Kansas: Provided, however, That nothing in this act shall be construed in any manner affecting any legal rights heretofore vested in any other party or parties.*"

Mr. Noble died long before the passage of the Resolution, and his widow who claims to succeed to his right *was not residing on the land* for at least four months preceding, nor for nine months following the passage of the Resolution. She does not bring herself within the terms of the Resolution; but if she did, and possessed the other necessary qualifications, her claim to the land in odd-numbered sections would be defeated by the last proviso in the Resolution, which saves all vested legal rights. The right to sections 9 and 17 had vested in the Railroad by the definite location of its road and withdrawal prior to that date. See cases of Pine and Wood, decided January 26th, 1872.

At the time of this definite location and withdrawal, Mrs Noble was holding this land without authority of law.

She had no claim as a pre-emptor under the treaty, because the treaty expressly prohibited all such claims. She had no claim to the odd sections under the Resolution, because it saved all vested rights, and the rights of the railroad had vested prior to its passage.

She had no claim to the forty-acre tract in section 16, because the treaty prohibited all pre-emption rights, and the Resolution excluded sections 16 and 36 from its operation.

I reverse your decision, and decide that the railroad is entitled to those portions of sections 9 and 17 in controversy, and the State to the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 16.

The papers transmitted with your letter of August 9, 1871, are herewith returned.

Very respectfully, your obedient servant,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

No. 557.

SARAH P. NOBLE.—(EXPLANATORY.)

The decision in the Sarah P. Noble case does not apply to cases where patents had been issued and delivered prior to its rendition. It was intended to be prospective in its operation, and to apply to those cases only where patents had not been issued and delivered.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 10th August, 1872.

SIR:—In answer to the inquiry contained in your letter of the 4th instant, I have to state that the decision of the Department, on the 23d February last, in the Sarah P. Noble case, was not intended to apply to cases where patents had been issued and delivered prior to its rendition. It never has been so applied, and never will be while I am charged with the duty now devolving on me.

It was intended to be prospective in its operation, and to apply to those cases only where patents had not been issued and delivered.

Patents for these ceded lands issued and delivered in accordance with former rulings of the Department, will not be disturbed.

I am, sir,

Very respectfully, your obedient servant,

W. H. SMITH, *Acting Secretary.*

T. C. JONES, Esq., *New Chicago, Kansas.*

No. 558.

PINE AND WOOD.

These parties, one under the homestead and the other under the pre-emption law, seek to appropriate certain Osage ceded lands in Kansas. They both settled and asked to make their filings after the passage of the joint resolution of April 10, 1869.

Held—That the treaty of July 21, 1867, (14 Stat., 687,) prohibited pre-emption and homestead settlements, and thereby operated as a repeal of the homestead and pre-emption acts, as to the Osage ceded lands.

A treaty with an Indian tribe is entitled to as much consideration as a treaty with an independent nation, (*Turner v. Am. Miss. Society*, 5 McLean, 349,) and is as binding as an act of Congress, (*U. S. v. Schooner Peggy*, 1 Cranch, 110. *Lodigee v. Roland*, 2 How., 581. *U. S. v. Brooks*, 10 How., 460. *Fellows v. Blacksmith*, 19 How., 372. *Joy v. Holden*, Circuit Court of Kansas, 3 Opins. Attorney General, 56, 366. 6 Do., 291, 658. 9 Do., 25. 10 Do., 508. 11 Do., 145. *Foster v. Neilson*, 2 Pet., 314. *Cherokee Tobacco*, 11 Wall., 621.)

This prohibition was not removed by subsequent legislation. These parties did not reside on the land at the date of the joint resolution nor within two years thereafter, and are not therefore within its provisions. The 12th Sec., act of July 15, 1870, did not apply to the ceded lands.

These claimants are not entitled to the land. Are the railroads? They claim under the acts of March 3, 1863, (12 Stat., 772,) and July 28, 1866. (14 Stat., 370.) It is conceded that the enacting clause does make a grant, but it is claimed that the provisos take the lands out.

For rule of construction see *Thornhill v. Hall*, 2 Clark and Finley, 36, and *United States v. Dickson*, 15 Pet., 165.

The grant is a float until location is made. *Lessiur v. Price*, 12 How., 59. *R. R. Co. v. Fremont*, 9 Wall., 94.

Congress authorized this and like treaties, 12 Stat., 793, Sec. 4. It ratified the 1st Sec. of the treaty by the act of September 29, 1865. (14 Stat., 261.) It ratified the grant by the act of April 19, 1871.

Held—That there was a grant to each railroad.

Secretary's decision, dated January 26, 1872.

No. 559.

HARRIS v. HON.

Land in Osage district, Kansas, claimed under resolution of April 10, 1869. (16 Stat., 55.)

Hon filed on 160 acres. Afterwards amended his filing so as to reject one 40 and include another.

This he did before any adverse right had accrued.

Held—That his action was proper.

Secretary's decision, dated December 6, 1872.

No. 560.

J. W. FALLS.

Under Joint Resolution of April 10, 1869, applicant for Osage Trust Lands must file his D. S. as in other cases. If he fails so to do, and an adverse claim attaches before filing, the applicant loses the land.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., 9th March, 1872.

SIR:—I have considered the application of James W. Falls, to enter under the Joint Resolution of April 10th, 1869, (16 Stat., 55,) the N. W. $\frac{1}{4}$ of Sect. 36, T. 29 S., R. 16 E., Osage Trust Lands, Humboldt, Kansas.

March 6th, 1871, he filed his D. S. on said land, alleging settlement September 20th, 1869, and April 6th, 1871, applied to make proof and payment.

Claimants under the Joint Resolution are required, by instructions issued by authority of and under it, to file notice of their claims the same as pre-emptors.

This land being unoffered, Falls was entitled to three months after settlement in which to file his D. S.

This he neglected to do and did not file until March 6, 1871, more than five months after settlement. This neglect, in the absence of any adverse right, was not necessarily fatal to his claim. But before he had filed, and on October 22, 1870, the right of the State of Kansas attached to this section 36, as school land, by this Department being notified at that date by the agreement of the Indians to such disposition of Sections 16 and 36, as is provided in Section 12 of the Act of July 15th, 1870. (16 Stat., 362.)

Falls' laches in the presence of the adverse claim of the State must defeat his claim, if he ever had any, under the Joint Resolution of April 10, 1869.

Your decision rejecting his claim is therefore affirmed, and the papers in the case accompanying your letter of January 3, 1872, are herewith returned.

Very respectfully,

C. DELANO, *Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land Office.*

No. 561.

WHEELER v. M. K. & T. AND L. L. & G. R. R. COMPANIES.

Osage Ceded Lands: 80 acres in odd and 80 acres in even sections. The 80 in odd sections given to this road under case of *Pine v. Wood*. The 80 even not given under the Resolution of April 10, 1869, (16 Stat., 55,) because of death of Wheeler, and the right given by that resolution is a personal privilege and does not pass to assignee or heirs.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., March 27, 1873.

SIR:—I have examined the appeal from your decision in the case of E. W. Wheeler, administrator for the heirs of *H. E. Were v. M. K. & T. and L. L. & G. Railroads*, involving title to the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Section 10, and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$ Section 11, T. 27 S., R. 19 E., Osage Ceded Lands.

Your decision gave the land to the heirs of Were under the Joint Resolution of 1869. The companies have appealed to the Department.

The claim of the heirs must be rejected so far as the W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ Sec. 11 is concerned, under my ruling in the case of *Pine and Wood v. the Companies*, January 26th, 1872, inasmuch as the tract is in an odd section within the limits of the grants in place to the roads.

The E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ Section 10, is not included in the grants to the companies, either in place or as indemnity, being in an even section within ten miles of the line of the Missouri, Kansas & Texas railroad. The record shows that at the date of the passage of the Joint Resolution, the ancestor of the claimants was residing on the tract, and that at the time of his death, March 12th, 1870, he had complied with all the requirements of law and was in every respect a *bona fide* claimant. It also appears that nearly all of his improvements were upon the even-numbered section.

In view of the principles enunciated by the Supreme Court of the United States in the recent case of *Myers v. Croft*, (13 Wall., 291,) holding the right of pre-emption before entry to be a valuable right and alienable in the absence of express statutory prohibition, I am of opinion that the right conferred by the Joint Resolution of 1869 upon settlers on Osage Lands is also alienable in the absence of any statutory prohibition, and by analogy, that the right of the ancestor, perfect at the time of his death, had a valuable interest in the tract in controversy, in the even section, and under the view I have taken above, such right, at his decease, descended to his heirs.

I modify your decision to conform to the view of law above stated, respecting the claim of the railroads under their grant, and award the W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ Section 11 to the companies, and the E. $\frac{1}{2}$ S. E. $\frac{1}{4}$ Section 10, to the heirs of Were.

The papers transmitted with your letter of October 24th, 1871, are herewith returned.

Very respectfully,

C. DELANO, *Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

II. DISPOSAL OF THE CHEROKEE STRIP, KANSAS.

No. 562.

CIRCULAR.

[Circular under Act of May 11, 1872.]

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,

August 7, 1872.

REGISTERS AND RECEIVERS, at *Independence, Kansas, and Wichita, Kansas*:

GENTLEMEN:—The following is an act of Congress, approved May 11, 1872, to carry out certain provisions of the Cherokee treaty of 1866, and for the relief of settlers on the Cherokee lands in the State of Kansas: [Part II., No. 58.]

The Secretary of the Interior, under date of 3d instant, forwarded his approval of the acceptance of the Cherokee delegation under the provisions of the second and fifth sections of the act, and directed the proper instructions to be issued by this office.

The first section fixes the price per acre, and provides for the sale of fractions less than forty acres.

The second section provides for the rights of settlers, and also for

town sites, subject to the limitations of the act, under regulations to be prescribed by this office.

You will therefore give notice, by publication of not less than four weeks in two newspapers having the largest circulation among the settlers on said lands in your district, that all persons claiming settlement prior to such publication must, within three months from the date of the notice, file in your office their declaratory statements, as in pre-emption cases, properly describing the land claimed and the date of settlement.

Thereafter such person must prove up and pay for the lands claimed within one year from the date of the Secretary's approval of the 3d instant, if the settlement was prior to the passage of the act, and within one year from date of settlement if subsequent to such passage.

Parties settling within one year from the date of the act, and subsequent to publication of notice, will be required to file their declaratory statements within three months, and make proof and payment within one year from date of settlement.

Town-site claimants must conform to the limitations herein, and file and make proof and payment within the time prescribed. No special instructions are deemed necessary for the execution of this provision.

Not exceeding one hundred and sixty acres can be taken by any settler. Where settlement is upon a tract contiguous to a fraction of less than forty acres, the fraction must be made a part of the entry, even to the exclusion of a regular quarter quarter-section or larger fraction; as the statute is specific in requiring the fraction to be sold with the contiguous tract.

In cases of conflict, however, where the settlement has been made prior to publication of notice, adjustment will be made to conform to the usual practice of awarding to each settler, as near as may be, by legal subdivisions, his house and most valuable improvements. In cases where settlement is initiated after such publication, priority will govern, as in pre-emption cases upon surveyed land.

The filings and entries under this act must be numbered consecutively in their order upon regular monthly abstracts, commencing with number one, and reported at the close of each month as "Cherokee Lands, under Act of May 11, 1872."

Your fees and commissions will be the same as in ordinary pre-emption cases, nothing but cash being received in payment for these lands.

The qualifications of applicants under this act must conform as to citizenship to those of a claimant under the pre-emption statutes, in accordance with the principles observed in the administration of the joint resolution of April 10, 1869, and the act of July 15, 1870, in disposing of the Osage lands.

The restrictions of the pre-emption law respecting ownership of or removal from other lands will not apply.

The rights of heirs are sufficiently defined by the statute. Entry for heirs must be made as in pre-emption cases, by the executor, administrator, or one of the heirs, or, in case of minor heirs, by a guardian. The right of the representatives in such case to act for the parties in interest must be shown by the customary proofs.

You will in all cases require the affidavit of the claimant (or, in case of heirs, of the executor, administrator, heir, or guardian), setting forth the fact and date of settlement, the period of actual bona-fide residence, the nature and amount of improvement, and the averment that the

same were made in good faith for his or her exclusive use and benefit, and not for purposes of sale or speculation, or for the benefit of any other person.

Also that no contract or agreement has been entered into whereby the title to be acquired can inure in whole or in part to the benefit of any other person.

This affidavit must be made before the Register or Receiver, and must be supported by the sworn testimony of two or more credible witnesses as to the qualifications of the claimant, the fact and date of settlement, the period of actual residence, and the nature, amount, extent, and value of the improvements.

Six months' residence must be shown as an indication and evidence of good faith.

The Receiver, as disbursing agent, will pay for the publication herein directed, and forward to this office, with his account for the same, copies of the newspapers containing the same, with proper affidavit of publication, showing its insertion for the required period.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

Approved: W. H. SMITH, Acting Secretary.

III. CHIPPEWA AND OTTAWA LANDS.

No 563.

CIRCULAR.

Approval of eighteen claims of the Lake Superior Band of Chippewas.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., March 15, 1873.

REGISTERS AND RECEIVERS OF U. S. LAND OFFICES.

GENTLEMEN:—The Secretary of the Interior, in a decision of March 19, 1872, advised this Office of his approval of the claims of eighteen half-breeds or mixed-bloods of the Lake Superior band of Chippewas to eighty acres of land each, under the provisions of the second article of the treaty of Sept. 30, 1854, between the United States and the Chippewas of Lake Superior.

On the first instant, the Acting Commissioner of Indian Affairs notified this Office that he had, under date of February 28, 1873, issued certificates of identity to the said eighteen half-breeds, as follows:

No. 316. Paul Belonger.	No. 322. Antoine Bagage.	No. 328. Joseph Deneaux.
No. 317. Antoine La Pierre.	No. 323. John Rice.	No. 329. Catherine La Point.
No. 318. John La Prairie.	No. 324. John B. Warren.	No. 330. Charles Mergan.
No. 319. D. George Morrison.	No. 325. Paul Belanger, sr.	No. 331. John Bte Parisian.
No. 320. Maggie Morrison.	No. 326. Peter Cota.	No. 332. Pousaint Chouinard.
No. 321. Ambrose Brunet.	No. 327. Charles Duverney.	No. 333. John Chouinard.

I have, therefore, to direct that, on presentation of the above-specified certificates, or any of them, by the parties in whose names the same were issued, or by their duly authorized agents, you will allow the location thereof in conformity with the following instructions.

It must be distinctly understood, however, that these instructions relate exclusively to the eighteen cases herein specified, and that all other unlocated Chippewa certificates or "script," issued under the said

second article of the treaty of September 30, 1854, remain subject to the order of suspension dated April 21, 1871.

1st. The parties, in locating their certificates, are authorized to locate, in any land district in the United States, upon surveyed lands open to entry or ordinary sale; and—

2d. Upon any unoccupied surveyed public land subject to pre-emption excepting mineral or reserved lands, the even-numbered double mini, mum or reserved sections, and any lands on which there is an actual settlement, unless with the written consent of the settler, duly attested.

3d. The land selected in satisfaction of a certificate must be located in the name of the party in whose favor the certificate is issued, and the location may be made by him or her in person, or by his or her legal representative or duly authorized agent, the authority to be duly shown by proper instruments.

4th. The application should be attested in each case by the Register and Receiver, and attached to each should be your certificate to the following effect:

LAND-OFFICE, _____,
_____, 18__.

We hereby certify that the within certificate has, this _____ day of _____, been located on the _____, containing _____ acres, agreeably to the 7th section of the 2d article of the treaty of 30th September, 1854, with the Chippewas, and by the party duly authorized to make the location.

Attest:

_____, *Register.*
_____, *Receiver.*

5th. No receipt is to be issued to the locator, except where there may be a small excess in the area of the location over the scrip, and in that case such excess must be paid for, and the Receiver must issue his receipt, which he will number and account for as in the case of bounty-land warrant excess. No certificate of purchase, however, is to be issued. In such cases the application, duly certified, with the scrip, being the instruments of title, are to be returned to the General Land-Office in this class of business.

6th. The Register, in case of excess payments, will append to the application his official statement, that _____ acres of said tract have been paid for, per Receiver's receipt No. _____

7th. Your proceedings in locating the certificates and your official returns are to be kept entirely separate and distinct from other sales and locations. At the close of each month the Register and Receiver will make a separate official return of certificates located, with all the papers on file connected with each location, accompanied by a monthly abstract, Form B.

8th. You will observe that this scrip is not assignable, transfers of the same being held void; consequently each certificate, as hereinbefore stated, can only be located in the name of the mixed-bloods; and such certificates are not to be treated as money, but located acre for acre.

9th. No fees or commissions of any kind are allowed by this Office for services of the land officers in this matter, such being an incident to their general duties; and you are, therefore, hereby interdicted from charging or receiving any compensation for such services.

These certificates are, of course, not applicable to any class of Indian trust lands, but only to surveyed unreserved, unincumbered public lands.

Very respectfully,

W. W. CURTIS, *Acting Commissioner.*

No. 564.

CIRCULAR.

Restoration to market of Ottawa and Chippewa lands in Michigan.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,

July 5th, 1872.

GENTLEMEN:—Annexed is a copy of the Act of Congress approved June 10, 1872, entitled "An Act for the restoration to market of certain lands in Michigan," referring to the lands embraced within the limits of the reservation for the Ottawa and Chippewa Indians of Michigan, and remaining undisposed of under the Treaty of July 31, 1855. (Statutes, vol. 11, page 621. Part II., No. 80.)

Your attention is particularly called to the second and third sections of said Act, as requiring action on your part. The second section provides that the unoccupied lands within the limits referred to shall be open to homestead entry for six months from the date of the Act, to a class of Indians therein defined. Under this provision, you will require any party wishing to enter, to produce within six months from the date of the Act, the official certificate of the proper Indian Agent, setting forth that he is an Indian of one of the tribes named, that he is of full age, and that he has not made any selection or purchase under the provisions of said Treaty. On such certificate being produced, together with the affidavit of the applicant to the same facts, as also that the tract desired is not occupied by any other party whose settlement thereon existed prior to the first day of January, 1872, you will examine your files and records, and if no objection appears, allow the entry to be effected as provided in the Act, see that it is made to appear on your records, as usual, and forward the agent's certificate and the affidavit of the applicant, with the usual entry papers, on which you will refer by its date to the Act, to this office, for examination in connection with our files and records, and for further proceedings according to law.

The third section provides that *bonâ fide* settlers on any of the lands, who settled prior to the first day of January, 1872, and have continued their residence, shall be entitled to enter the same, either under the homestead law, or by cash entry, to the maximum quantity of one hundred and sixty acres each, if held at the ordinary minimum price of \$1.25 per acre, or eighty acres, if held at the double minimum price of \$2.50 per acre, on their making satisfactory proof of such settlement and continued residence within the six months specified in the act. This proof may consist of the affidavit of the party applying to enter, corroborated by the affidavits of two disinterested witnesses, and on the production thereof, within the time indicated, you will allow the entries, and forward the proof to this office, with your returns for the entries allowed, referring on the latter to the Act by its date.

You will observe that prompt action is necessary in all cases which may come before you under the provisions of said Act.

Immediately after the expiration of the six months, the lands remaining undisposed of will be restored to market by the Secretary of the Interior, in the manner prescribed by the Act, in its fifth section.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER.

Approved and prescribed: C. DELANO, *Secretary Interior*.

No. 565.

INDIAN LANDS IN MICHIGAN, ACT MARCH 3, 1875.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
March 18, 1875.

GENTLEMEN:—I have to call your attention to the act of Congress approved March 3, 1875, a copy of which is annexed, entitled "An Act to amend the act entitled 'An Act for the restoration to homestead entry and to market of certain lands in Michigan,' approved June tenth, eighteen hundred and seventy-two, and for other purposes." (Part II., No. 143.)

This act consists of three sections, the first and the third of which refer to the lands which were reserved for the benefit of the Ottawa and Chippewa Indians of Michigan, under the treaty of July 31, 1855, (Statutes, vol. 11, page 621,) and which remain undisposed of, and the second of which refers to certain tracts on which, it appears, although they were not included in the reservation under said treaty, Indians have settled and made improvements, the same lying in Section 10, Township 47 N., of Range 2 E., and Section 24, Township 47 N., of Range 3 W., in Michigan. In carrying into effect the provisions of this act you will be guided by the following, viz:

1. The first section provides for the issue of patents to "three hundred and twenty members of the Ottawa and Chippewa Indians of Michigan, for the selections found to have been made by them, but which were not, prior to the passage of said act" of June 10, 1872, "regularly reported and recognized by the Secretary of the Interior and Commissioner of Indian Affairs." Some of the tracts covered by these selections lie within the Marquette land district, others within the Traverse City and Ionia districts. Lists will be sent herewith to the proper district land-offices, showing the selections within the respective districts. As soon as received, the Registers and Receivers will enter the selections on their records, in order that they may be respected in the proceedings to be had for disposing of the lands embraced in the reservation. The first section provides further, that "the remainder of said lands not disposed of, and not valuable mainly for pine timber; shall be subject to entry, under the homestead laws, for one year from the passage of the act," and that "the lands remaining thereafter undisposed of shall be offered for sale at a price not less than two dollars and fifty cents per acre." On a party applying to you for the benefit of this section at any time before the expiration of one year from the passage of the act, you will require him to submit his affidavit stating that he has made personal inspection of each smallest legal subdivision of the tract proposed to be entered, and that he knows, from such inspection, with regard to each smallest legal subdivision thereof, that it is not valuable mainly for pine timber, but that it is more valuable for agricultural purposes than for such timber, this to be corroborated by similar affidavits by two or more disinterested witnesses. If the application be made within ninety days from the passage of the act, the affidavits must also set forth that the tract desired is not in the occupancy of any settler entitled thereto under the third section of the act, hereinafter adverted to. Should the proof be found satisfactory, you will indorse on it your decision to that effect, and, if no legal objection appear, permit the party to enter such land in quantity not to exceed 160 acres, or one quarter section, if minimum

land, or 80 acres, or a half-quarter section, if double-minimum land; it being understood, however, that a soldier or sailor entitled under the act of June 8, 1872, may enter to the extent of 160 acres, or one-quarter section, of either class; you will then properly note the same on your records, and make the usual returns therefor to this Office, forwarding the proof with your returns. At the expiration of one year from the passage of the act, you will allow no more entries to be made thereunder, but will report to this Office a descriptive list of all tracts in the reservation which may then be undisposed of, that proper steps may be taken to have them offered for sale as the act provides.

2. In the third section, it is provided that "all actual, permanent, *bona-fide* settlers on any of the lands" embraced in the reservation "shall be entitled to enter not exceeding one hundred and sixty acres of land, either under the homestead laws, or to pay the minimum price of land, on making proof of his or her settlement and continued residence, before the expiration of ninety days from the passage of the act, provided that such settlers do not claim any of the lands heretofore patented to Indians or in conflict with the selections found to have been made by the Indians referred to in the first section of this act, and shall have settled upon said lands prior to the first day of January, 1874." On a party applying for the benefit of this section at any time within ninety days from the passage of the act, you will require him to make proof of his actual, permanent, *bona-fide* settlement on the land applied for, and that he settled thereon prior to the first day of January, 1874; such proof to consist of the affidavit of the applicant, corroborated by the affidavits of two or more disinterested witnesses. Should the proof be found satisfactory, you will indorse on it your decision to that effect, and if no legal objection appear, permit him to enter the land, in quantity not exceeding one hundred and sixty acres, under the homestead laws, or to purchase and pay for the same at the minimum price of \$1.25 per acre, properly note the transaction on your records, and make the usual returns thereof to this Office, forwarding with such returns the proof submitted by the party. No entries under this section are to be allowed after the expiration of ninety days from the passage of the act.

3. The second section of the act refers to certain tracts not included in the reservation as provided for in said Treaty, but on which settlement and improvements have been made by Indians, being in Section 10, Township 47 N., of Range 2 E., and Section 24, Township 47 N., of Range 3 W.; and it provides that "all Indians" who have made such settlement and improvements "shall be permitted to enter, not exceeding eighty acres each, at the minimum price of land, upon making proof of such settlement and improvement before the Register of the land office at Marquette, Michigan, and that when said entries shall have been completed in accordance herewith, the remaining lands embraced within the limits of said sections shall be restored to market." The vacant tracts embraced in said sections ten and twenty-four are to be treated as reserved from any other disposal than that for which the act provides. On any Indian applying to the district land office, at Marquette, for the benefit of this section of the act, he must make proof, to consist of his own affidavit, corroborated by the affidavits of two or more disinterested witnesses, setting forth his character as an Indian, that he is settled, with improvements, on the tract desired, and that his settlement and improvements were made prior to the passage

of the act, on which proof, if found to be satisfactory, the Register will indorse his decision to that effect. Thereupon, if no legal objection appear, such Indian will be permitted to enter the tract so settled on and improved by him, not to exceed eighty acres in quantity, at the minimum price of one dollar and twenty-five cents per acre, the entry to be properly noted on the records of the district land-office, and the usual returns thereof forwarded to this Office, together with the proof submitted. At the expiration of one year from the passage of the act, which will afford ample time for the beneficiaries to avail themselves thereof, the Register and Receiver will report any tracts which may then be vacant in said sections ten and twenty-four, for restoration to market, as the act provides.

Please acknowledge the receipt thereof.

Very respectfully, your obedient servant,

S. S. BURDETT, *Commissioner*.

REGISTER AND RECEIVER.

No. 566.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., April 21, 1871.

TO REGISTERS AND RECEIVERS OF U. S. LAND OFFICES.

GENTLEMEN:—Herewith find copy of order of Department, dated 20th inst., suspending action on all applications of Chippewa mixed-bloods to enter lands under 7th article treaty September 30, 1854, 10th article treaty October 2, 1863, and 7th article treaty April 12, 1864, and you will govern yourselves accordingly.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., April 20, 1871.

SIR:—I have to request that, until further advised, you will suspend all Chippewa scrip locations or personal applications not yet patented, made by any Chippewa mixed-bloods under the 7th article of the treaty of September 30, 1854, with the Chippewas; the 8th article of treaty of October 2, 1863, or the 7th article supplemental treaty of April 12, 1864, with the Chippewas of Pembina and Red Lake.

You will also direct the proper district land-officers to reject, until further orders, all applications to enter lands under the above articles of said treaties.

Locations made prior to the receipt of this order by them, may be reported to your office, the same, however, to be suspended when they shall be received by you.

I am, sir, very respectfully,

C. DELANO, *Secretary*.

TO HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

IV. KANSAS TRUST AND DIMINISHED RESERVE LANDS.

No. 567.

CIRCULAR.

Act of June 23, 1874. (Part II, No. 125.)

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

August 15, 1874.

REGISTER AND RECEIVER, *Topeka, Kansas.*

GENTLEMEN: Annexed is a copy of an act of Congress entitled "An act providing for the sale of the Kansas Indian lands in Kansas to actual settlers, and for the disposition of the proceeds of the sale," approved June 23, 1874, to the provisions of which I have to call your attention, and to present the following for your guidance in carrying them into effect, viz.:

I. The lands to be disposed of under said act are in two divisions: *first*, what are known as the "Kansas Trust Lands," in townships 14, 15, and 16 south, of ranges 8, 9, 10, and 11 east, and townships 17 and 18 south, of ranges 10 and 11 east; *second*, what are known as the "Kansas Diminished Reserve," in townships 16, 17, and 18 south, of ranges 8, 9 and 10 east, descriptive lists of the same being inclosed herewith. (Nos. 1 and 2.)

II. The special beneficiaries under said act are of two classes; *first*, *bona-fide* actual settlers on the "Trust Lands" embraced in the act of May 8, 1872, who have been identified as such by the Office of Indian Affairs, and the names of whom, with the tracts awarded to them respectively, are given on lists inclosed herewith; (Nos. 3 and 4;) *second*, actual settlers on such of the "Trust Lands" as are not taken up by the class of settlers just mentioned, and on that portion of the "Diminished Reserve" not already disposed of.

III. On application by a party of the *first* class mentioned, for the benefits of said act, you will proceed as follows: By reference to lists Nos. 3 and 4, ascertain the tract awarded to the party, as indicated thereon; the register will then require him to make application for the entry of such tract, in writing, according to the form usual in cash entries, which he will number in a series beginning with No. 1, indorse as "*Application for Kansas Trust Lands, Act June 23, 1874,*" and retain on a special file to be kept in his office; at the same time he will require the party to enter into bond, with security to be approved by the United States attorney for the district, that he shall commit no waste on the timber or otherwise on said land until the last payment shall be made, as contemplated in said act, except in cases in which the party may submit proof, to consist of his own affidavit, corroborated by two witnesses, that they have examined the land and that there is no timber on it. In such cases, if the proof is satisfactory, you will indorse on it your decision to that effect, and the bond will not be required, but the proof shall be filed in lieu thereof. The receiver will then permit the party to pay, as the first installment provided for in the act, *one-sixth* of the appraised value of the land, as shown in lists Nos. 3 and 4, and give his notes for the remaining *five* installments, payable annually to the United States, the first to become due in one year, the second in two years, the third in three years, the fourth in four years, and the fifth in five years from the date of entry, with

interest at six per centum per annum; he will issue his receipt for the cash payments and the notes received, according to form herewith, marked A, which he will number in a series beginning with No. 1, referring thereon to the number of the original application for the entry, and will indorse with the words, "*Kansas Trust Lands, Act of June 23, 1874.*" You will enter the transaction on your books as a sale of the tract, indicating it thereon as "*Kansas Trust Land,*" and the sale as made under the act of June 23, 1874. At the close of the month, forward to this office an abstract of the entry or entries so allowed during the month, certified by you jointly, form herewith, marked B. With this, forward the receiver's receipt for the cash payment made, the notes given by the party for the deferred payments, and the bond entered into by him not to commit waste, or the proof of the fact that there is no timber, as before provided for. As the subsequent installments become due, and shall be paid by the party, with the interest thereon, the receiver will issue his receipt for the money, in the same form, numbering and indorsing it as before directed, with only such modification as will be necessary to show the difference in the *installment* for which issued, and at the close of the month you will, with the receipts issued, forward an abstract of the payments made during the month, according to form herewith, marked C. When the return of such a payment shall be received here, and found to be satisfactory, the note given therefor by the party will be cancelled and sent to you, for return to him. As soon as the last installment shall have been paid, completing the purchase-money for the land, and the receiver issued his receipt therefor, the register will issue his certificate of purchase for the tract, in the form usual in cash entries, but modified as shown in blank herewith marked D, the certificates so issued to be numbered in a series beginning with No. 1, and reference made thereon to the number of the original application, the certificate to bear the endorsement, "*Kansas Trust Lands, Act of June 23, 1874,*" and on the abstract of payments made for the month, embracing the last payment, the fact of the issue of the certificate is to be entered as a marginal note to that payment, as follows: *Certificate of purchase issued, No. —.* On the receipt here of the certificate it will be examined, and, should no objection appear, be patented in regular course. You will in every case note on your records the receipt of the several installments of purchase-money as fast as received, and the issue of the certificate of purchase, when that is done, giving the date and number of the receipt or certificate.

By the first section of the act the entry must be made, and the first installment of purchase-money must be paid by parties of this class *on or before the first day of January, 1875*, and you will allow no such entry and payment of the first installment after that date.

IV. On application by a party of the *second* class mentioned, for the benefits of said act, you will proceed according to the foregoing instructions, except in regard to particulars as to which they would not be applicable under the law, and relative to which other provision is made in the following, viz: In such cases require the party to produce proof that he is an actual settler on the tract desired by him, the proof to consist of his own affidavit, corroborated by the testimony of two witnesses, to show the length of time the party shall have resided thereon, and the character and extent of his improvements, according to forms herewith, marked E and F, on which, if found satisfactory, you will endorse your decision to that effect, and forward it, with the other

returns, to this office; the application of the party for the entry of the tract occupied by him, which is not to exceed 160 acres, except in case of legal subdivision, an irregular quarter-section, containing a greater quantity, must be numbered in a separate series, beginning with the number one, and be indorsed as "*Application for Kansas Trust and Diminished Reserve Lands, Act of June 23, 1874.*" As the first installment of purchase-money the party will pay *one-fourth* of the appraised value of the tract, as shown by lists Nos. 1 and 2, and he will give his notes for the remaining *three* installments, the first to become due in one year, the second in two years, and the third in three years from the date of entry, with interest at the rate of six per centum per annum. In issuing receipts and certificates and making up monthly abstracts, the forms before given will be used, but so modified as to express the fact that the entries are of "*Kansas Trust and Diminished Reserve Lands.*" These you will take care to keep separate and distinct on your records and files, in numbering and indorsing papers, and in making returns to this office, from the entries of Kansas Trust Lands before provided for.

V. In any entry allowed under said act, should the party fail to pay any of the deferred installments of purchase-money within ninety days after it shall become due, you will not permit payment to be made thereafter, but will immediately report the failure to this office, in order that the entry may be canceled and the land laid open to sale again, pursuant to the first proviso to the second section of said act.

VI. By the last proviso to the second section of said act, the parties referred to as special beneficiaries must avail themselves thereof *on or before the 23d of June, 1875.* After that date you will allow no entries under the foregoing instructions; but any of said lands then remaining undisposed of may be sold, in amounts not exceeding 160 acres to any one person, at the appraised value as given in lists Nos. 1 and 2. In case of any such sale you will proceed as in allowing ordinary cash entries, but you will note on your books, on the papers issued for the entries, and on your monthly abstracts, as returned to this office, that they are "*Kansas Trust and Diminished Reserve Lands,*" sold under the act of June 23, 1874.

*VII. The receiver will render a separate account of these Indian lands in the following manner, viz: He will, in his receiver's account, credit the United States with all moneys received during the quarter from the sale of the lands, which will not include the amount called for in the notes given for the several deferred payments, but only the amount of money payments, as made from time to time, and will charge the United States with amount deposited and the amount of authorized disbursements for the quarter. In his disbursing account he will charge the United States with the authorized disbursements and credit the United States the said amount, as carried to the receiver's account and therein charged.

Acknowledge the receipt of these instructions and the papers referred to as inclosed.

Very respectfully, your obedient servant,
S. S. BURDETT, *Commissioner.*

*See No. 568.

No. — Application No. —
Received from — of — county, the sum of — dollars and — cents, as one-sixth of the purchase-money for the — quarter of section No. — in township No. — of range No. —, being the first installment, and also — promissory notes from him payable to the United States for — dollars and — cents each, equal to the remaining installments of the purchase-money, under the act of Congress of June 23, 1874. RECEIVER'S OFFICE,
Topeka, Kansas, 18—,
Receiver.

FORM A.

ACT OF JUNE 23, 1874.
FORM B.—Register of entries made at the land-office, Topeka, Kans., under the act of June 23, 1874, from the — day of —, 187—, to the — day of the same month, inclusive, of Kansas trust lands.

Number of application.....	Date of application.....	Tract entered (section or part of section.).....	Number of section.....	Number of township.....	Number of range.....	Quantity. Acres..... 100ths.....	Name of applicant.....	Residence.	Value of Land.		Value of improvements.		Total amount of purchase money.		Installment paid.		Number of receipt
									Dollars	Cents...	Dollars	Cents...	Dollars	Cents...	Dollars	Cents...	

DISTRICT LAND OFFICE,
Topeka, Kansas, 18—,
We hereby certify that we have examined and compared the applications and receipts in the above entries with the plat-books, tract-books, and other records in this office, and with the above abstract; that we find the entries, as above given, to have been allowed according to law and instructions; that the papers therefor agree with each other and the records in this office, and are correct. REGISTER,
Topeka, Kansas, 18—,
Receiver.

FORM C.—Register of receipts issued by the receiver of public moneys at Topeka, Kansas, for lands entered under the act of June 23, 1874, from the _____ day of _____ to the _____ day of the same month, inclusive, being Kansas trust lands.

Date of receipt.	Number of receipt.....	By whom purchased.	Tract purchased.	Quantity.	Value of land.	Value of improvements.	Total amount of purchase money.	Amount of installment paid.		Number of application.....
								Dollars.....	Cents.....	
		Name.....	Residence	Section or part of section...	Number of section...	Number of township	Number of range.....	Dollars.....	Cents.....	
								Dollars.....	Cents.....	
				Acres.....	Dollars.....	Cents.....	Dollars.....	Cents.....		
				100ths.....	Dollars.....	Cents.....	Dollars.....	Cents.....		

DISTRICT LAND OFFICE,
Topeka, Kansas, _____, 18____.

We hereby certify that we have examined and compared the applications and receipts in the above entries with the plat-books, tract-books, and other records in this office, and with the above abstract; that we find the entries, as above given, to have been allowed according to law and instructions; that the papers therefor agree with each other and the records in this office, and are correct.

_____, Register.
_____, Receiver.

FORM D.

No. —.

Application No. —.

LAND OFFICE AT TOPEKA, KANSAS, —, 18—.

It is hereby certified that, in pursuance of law, —, —, —, County, State of —, on the — day of —, 18—, purchased of the register of this office the lot or — of section No. — in township No. — of range No. —, containing — acres, at the appraised value of the land and the improvements thereon, amounting to — dollars and — cents, for which the said — ha—made payment in full as required by law.

Now, therefore, be it known that, on presentation of this certificate to the Commissioner of the General Land-Office, the said — shall be entitled to receive a patent for the lot above described.

—, Register.

FORM E.

Affidavit required of an applicant to enter a tract of Kansas trust and diminished reserve lands, as an actual settler thereon, under the second section of the act of Congress of June 23, 1874.

I, —, of — County, —, desiring to enter the — quarter of section No. —, in township No. — of range No. —, subject to entry at Topeka, Kansas, under the second section of the act of June 23, 1874, do solemnly swear that I have made actual settlement upon said land, having resided thereon since the — day of —, 18—, to the present time, and that it is not in the occupancy of any other party entitled to enter it under the provisions of said act.

Sworn to and subscribed before me, this — day of —, 18—.

FORM F.

Corroborative proof required of an applicant to enter a tract of Kansas trust and diminished reserve lands, as an actual settler thereon, under the second section of the act of Congress of June 23, 1874.

We, — and —, do solemnly swear that we have known — for — years last past; that he is an inhabitant of the — quarter of section No. — in township No. — of range No. —, and that no other person resides upon the said land entitled to enter it under the act of June 23, 1874; that said — entered upon and made settlement on said land on the — day of —, 18—, and has built a house thereon, and has lived in the said house and made it his exclusive home from the — day of — 18—, to the present time; and that he has since said settlement

plowed, fenced, and cultivated about — acres of said land, and has made the following improvements thereon, to wit: —

_____.

Sworn to and subscribed before me, this, — day of —, 18—.

We certify that — and —, whose names are subscribed to the foregoing affidavit, are persons of respectability.

_____, *Register.*

_____, *Receiver.*

NOTE.—It is not indispensable that the foregoing affidavits should be made before the land officers. When that cannot be conveniently done, they may be made before any officer authorized to administer oaths, and in that case his official character must be certified under seal.

[Then follow thirty-five pages of appraisements of the trust lands, with those awarded to *bona-fide* settlers indicated thereon. This circular can be obtained of the Topeka Land-Office or the General Land-Office.—Ed.]

No. 568.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., October 3, 1874.

REGISTER AND RECEIVER, *Topeka, Kansas.*

GENTLEMEN:—Referring to my letter to you of 15th August last, covering instructions for your guidance in the sale of the "Kansas Indian Lands," I have now to say, that on further examination of the act approved June 23, 1874, having in view the purpose of Congress to secure at as early a day as possible the sale of all the lands embraced by said act at their appraised value, I am of the opinion that the privilege of payment by installments, as specifically provided for in the body of the second section of said act of June 23, 1874, in the case of actual settlers, may properly be extended to the case of persons applying to purchase under the provisions of the last proviso of the said second section. The sixth paragraph of my said letter of instructions is therefore rescinded, and in lieu thereof the following rule is prescribed for your guidance:

VI. By the last proviso of the second section of said act, the parties referred to as special beneficiaries must avail themselves thereof on or before the 23d day of June, 1875. After that date, any of said lands then remaining undisposed of may be sold, in amounts not exceeding 160 acres to any one person, at the appraised value as given in lists Nos. 1 and 2; payment to be made as in ordinary cash entries, or at the option of the purchaser, in four installments. In case of payment by installments being preferred, the conditions as to time and amount of payments, the execution of notes for deferred payments, security against waste, forfeiture for non-compliance, and the form of receipts, certificates, and abstracts to be used, will conform to the instructions found in the fourth paragraph of my said letter of 15 August. In case of any cash sales, you will proceed as in allowing ordinary cash entries; but you will note in your books, on the papers issued for the

entries, and on your monthly abstracts returned to this Office, that they are "Kansas Trust and Diminished Reserve Lands," sold under the act of June 23, 1874.

Very respectfully,

S. S. BURDETT, *Commissioner*.

V. BITTERROOTS VALLEY, MONTANA, INDIAN LANDS.

No. 569.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., March 26, 1874.

GENTLEMEN:—I transmit herewith copy of "An act to amend the act entitled 'An act to provide for the removal of the Flathead and other Indians from the Bitterroot Valley in the Territory of Montana,' approved June fifth, eighteen hundred and seventy-two." (Part II., Nos. 70, and 102.)

This act was approved February 11, 1874, and extends the time for sale and payment on the lands therein referred to for the period of two years from the expiration of the time allowed by act of June 5, 1872, to wit, two years from and after the date when the time for payment would otherwise expire in each case.

The second section allows these lands to be taken under the homestead laws in the same manner as other public lands, and you will treat them accordingly. Please acknowledge receipt.

Respectfully,

WILLIS DRUMMOND, *Commissioner*.
REGISTER AND RECEIVER, *Helena, Mont.*

No. 570.

INSTRUCTIONS.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., July 18, 1874.

GENTLEMEN:—Yours of April 13, 1874, has been received.

I will reply briefly:

1st. All sections, odd and even, opened to settlement by act approved June 5, 1872, entitled "An act to provide for the removal of the Flathead and other Indians from Bitterroot Valley, in the Territory of Montana," are subject to pre-emption and homestead entry.

2d. Settlers may file on odd in the same manner as on even sections.

3d. A settler *should* name the actual date of his settlement in his declaratory statement. That he does not do this is not ground for rejecting his filing. In any case where it becomes material, a decision will be rendered after the whole case shall have been duly presented, and until the dates alleged in a declaratory statement are *proven* incorrect, they must be treated as true.

4th. Settlers are allowed to homestead 160 acres, and commute the same as in ordinary cases at \$1.25 per acre.

Respectfully,

S. S. BURDETT, *Commissioner.*

REGISTER AND RECEIVER, *Helena, Montana Territory.*

VI. LOCATION OF DAKOTA OR SIOUX HALF-BREED
SCRIP.

No. 571.

CIRCULAR.

Act July 17, 1854.

GENERAL LAND-OFFICE,

February 22, 1864.

GENTLEMEN:—Questions frequently arise in regard to the location of Dacotah or Sioux Half-Breed Scrip issued some years ago from the Office of Indian Affairs.

The issue was as follows: 2 for 40 acres each; 1 for 80 acres; and 2 for 160 acres each, making an aggregate for each one of 480 acres, designated thus, for example, in the first case: No. 1 A, 40 acres; No. 1 B, 40 acres; No. 1 C, 80 acres; No. 1 D, 160 acres; No. 1 E, 160 acres.

This scrip, as declared on its face, is locatable upon the following described classes of lands, viz:

Upon the Sioux Half-breed reservation situated wholly in the Saint Peter Land District, in Minnesota; being in townships 108 to 110, ranges 9 to 15.

APPLICATION OF SCRIP TO SPECIAL LOCALITIES.

1st. The scrip may be located by the Half-breed upon any land within this reserve upon which, at the date of the act of July 17, 1854, he was an actual *bona-fide* settler.

2d. Upon any land within said reservation which, at the date of said act, was not so occupied by a Half-breed, or any other person who may have gone into said reservation under authority of law.

To constitute a Half-breed or Mixed-blood an actual and *bona-fide* SETTLER within the meaning of the statute, it must be shown, by proof satisfactory to you, that he was an occupant by personal inhabitation within said reservation at or before the passage of the act of July 17, 1854, and in such case he will be entitled to locate his scrip, embracing his improvements, conforming to the legal subdivisions of the public surveys, unless such location interferes with another *bona-fide* settler, when each will be allowed to take such subdivisions as will embrace his improvements.

The persons who have "gone into said territory by authority of law" are, as the land officers at Saint Peter will understand, only such white persons as, prior to the passage of said act of July 17, 1854, had entered said reservation under the Indian Intercourse laws—such as licensed traders, authorized missionary teachers, and other persons in the employ of Government in connection with Indian affairs, and who inhabited the lands and made improvements thereon prior to said act.

APPLICATION OF SCRIP TO GENERAL LOCALITIES.

Besides these special stipulations in the law in regard to locations in the Minnesota Half-breed reservation, the aforesaid statute enlarges the sphere of location by authorizing the location of the scrip—

3d. "Upon any other unoccupied lands subject to pre-emption or private sale."

You will understand, however, that no *mineral* or *reserved* lands can be taken by this scrip, nor can it be located upon the even-numbered, double minimum, reserved sections, nor upon any lands on which there is an actual settlement; but it may be located—

4th. "Upon any other unsurveyed lands, not reserved by Government, upon which they have respectively made improvements."

Where the Half-breed for himself may make actual settlement, his improvements will be notice on the ground to any other settler, and in this respect he will stand on the same basis as a pre-emptor on unsurveyed land, and, of course, cannot adjust his location until after the return of the township plat to the district land-office. Hereafter, and within three months, he should repair to such land-office, file his scrip with his affidavit, designating specifically, in compact legal subdivisions, the tracts embracing his improvements, and should state in his affidavit the character and extent of these improvements, and file testimony of competent witnesses corroborative of his statement.

The land selected in satisfaction of a certificate of scrip must, of course, be located in the name of the party in whose favor the scrip is issued, and the location may be made by him or her in person, or by his or her guardian or duly authorized agent. The application should be duly attested in each case by the Register and Receiver, and attached to each should be your certificate to the following effect:

"LAND OFFICE AT _____,
_____, 1864.

"We hereby certify that the within scrip has, this _____ day of _____
been located on the _____
containing _____ acres, agreeably to the act of 17th July, 1854, and
by the party duly authorized to make the location.

"Attest:

"_____
"Register.

"_____
"Receiver."

No receipt is to be issued to the locator, except in unavoidable cases, where there may be a small excess in the area of the location over the scrip, and in that case it must be paid for, and the Receiver will issue his receipt, which he will number and account for, as in the case of bounty-land warrant excess. But no certificate of purchase is to be issued; the scrip and application, instead of certificates of purchase, being the instruments of title, which are to be returned to the General Land-Office in this class of business.

The Register, however, in the case of excess payments, will append to the application his official statement that _____ acres of said tract (the excess) have been paid for, per Receiver's receipt No. _____.

Your proceedings in locating the certificates, and your official returns,

are to be kept entirely separate and distinct from other sales and locations. At the close of each month the Register and Receiver will make a separate official return of scrip located, with all the papers on file connected with each location, accompanied by a monthly abstract.

You will observe that this scrip is NOT ASSIGNABLE, transfers of the same being held void; consequently each certificate, as hereinbefore stated, can only be located in the name of the Half-breed; and such certificates or scrip are not to be treated as money, but located acre for acre.

No fees or commissions of any kind are allowed by this Office for services of the land officers in this matter, such being an incident to their general duties; and you are, therefore, hereby interdicted from charging or receiving any compensation for such services. This scrip is, of course, not applicable to any class of Indian Trust Lands, but only to unreserved, unincumbered public lands.

Very respectfully, your obedient servant,

J. M. EDMUNDS, *Commissioner.*

REGISTER AND RECEIVER at _____.

No. 572.

CIRCULAR.

Requirements in locating Sioux Half-Breed Scrip.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., January 29, 1872.

TO REGISTERS AND RECEIVERS, UNITED STATES DISTRICT LAND OFFICES.

GENTLEMEN:—It has been brought to the notice of this Office that Sioux H. B. Scrip has frequently been filed in the local land-office for unsurveyed lands, and that, under the shadow of title thus acquired, the land has been denuded of the timber or otherwise depreciated, and after survey the parties would allow the time for adjustment to pass without action, and then withdraw the Scrip from the Office and file it for, or relocate it upon, other land.

The provision of the law of July 17, 1854, under which the Scrip was issued, on its applicability to unsurveyed land, provides for its location on any unsurveyed lands not reserved by Government, upon which the Indians, to whom the Scrip issued, shall have made improvements.

With the view, therefore, to protect fully the Government interests and to carry out the law in its meaning, you are directed to see that the following requirements are strictly complied with, where application is made to file said Scrip for unsurveyed lands:

1st. That the application must be accompanied with the affidavit of the Indian, or other evidence that the land contains improvements made by or under the personal supervision or direction of said Indian, giving a detailed description of said improvements, and that they are for his personal use and benefit; in other words, you should be satisfied that the Indian has a direct connection with the land, and is claiming the same for his personal use. Unless such evidence is filed, you will reject the application.

2d. The filing of the Scrip must be considered in the character of a location, and should such filing not be followed within the time prescribed by our circular of February 22, 1864, relating to the location of this Scrip, by an adjustment to the official plat of survey, you will, immediately thereafter, adjust the same yourselves, as near as may be practicable, from the map and description filed by the party, and forward the same to this Office with regular abstract and reference to your action; or, if you are unable to determine the locality of the land in the public surveys, you will report the fact, forwarding therewith all the papers in the case, for our action.

At the end of each month you will report, in an addendum to your regular abstract of Scrip locations, the number and name of Scrip filed during the month for unsurveyed land, retaining the Scrip and papers on file for future adjustment. You will notify all who may apply either to adjust claims now pending or to present new claims, of the requirements herein.

Acknowledge receipt of this.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 573.

PARK SILVER MINING COMPANY.

The kind of land upon which S. H. B. scrip may be located.

Where a township has been partly surveyed, S. H. B. scrip may be located upon what will be section sixteen when the remainder of the township shall be surveyed.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND-OFFICE,

Washington, D. C., June 26, 1874.

REGISTER AND RECEIVER, *Salt Lake City, Utah.*

GENTLEMEN:—I am in receipt, by reference from Hon. T. W. Ferry, of a letter from L. G. Mason, Esq., president of Park Silver Mining Company, under date of the 16th inst., enclosing a diagram of that part of Tp. 2 S., R. 4 E., Utah, which has been surveyed, and stating that your office has rejected the application of said company to locate Sioux Half-Breed scrip on certain lands, on the ground that the same will be in section 16 of said township, a school section, when the survey thereof shall be made.

By act of February 26, 1859, (Stats.-at-Large, vol. 2, p. 385,) it is provided "That where settlements with a view to pre-emption have been made *before survey* of the lands *in the field*, which shall be found to have been made on sections sixteen and thirty-six, said sections shall be subject to the pre-emption claim of such settler."

By reference to my circular of February 22, 1864, you will perceive that Sioux Half-Breed scrip may be located upon any unoccupied lands subject to pre-emption or private sale, or upon any unsurveyed lands not mineral or reserved by Government, upon which the half-breed, or some person for him, has made improvements; that where the half-breed for himself may make actual settlement, his improvements will be notice on the ground to any other settler, and *in this respect* he will stand on the same basis as a *pre-emptor* on unsurveyed land, and of course cannot adjust his location until after the return of the township plat to the district land-office.

Now, although said township has been in part surveyed, and it may be surmised that should the remaining part thereof ever be surveyed, the lands in question will be found to be in section 16, yet the fact is patent and undisputed that they are now unsurveyed lands. Therefore, if not mineral, they are subject to S. H. B. scrip location, under the rules and regulations above referred to.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 574.

INSTRUCTIONS.

Location of Sioux Half-breed Scrip by Heirs of Deceased Scribee.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., Nov. 12, 1874.

REGISTER AND RECEIVER, *Springfield, D. T.*

GENTLEMEN:—I am in receipt of your letter of the 5th ult., asking for instructions in the matter of the location of Sioux half-breed scrip by the heirs of a deceased scribee.

In reply I have to say that, where a scribee dies intestate, his legal heirs, if adults, may locate the scrip issued to him either in person or by attorney. If such heirs be minors, they may locate the scrip by a guardian or by an administrator. In the cases both of adults and minors the application to locate must be accompanied by a certificate under seal of a court having probate jurisdiction, to the effect that the scribee died intestate, and that the parties claiming to be heirs are such in fact, and the *only* heirs.

Where a guardian or administrator locates scrip either in person or by attorney, the application must be accompanied by a certified copy of the letters of guardianship or administration, as the case may be.

Where a scribee dies testate, the scrip may be located for the heirs by the executors or the administrator with the will annexed.

In such cases the application to locate must be accompanied by a certified copy of the will of the deceased scribee.

Very respectfully,

S. S. BURDETT, *Commissioner*.

VII. JUDICIAL DECISIONS.

INDIAN PURCHASES.

The government possesses the exclusive right of granting the soil to individuals, subject only to the Indian right of occupancy. *Johnson v. McIntosh*, 8 Wh., 543. *Mitchel v. United States*, 9 Pet., 712. *United States v. Fernandez*, 10 Pet., 303. *United States v. Rillieux's Heirs*, 14 H., 189. *Sparkman v. Porter*, 1 Pa., 457.

The Indian title is subordinate to the absolute ultimate title of the government; and no grant from an Indian tribe to an individual is recognized in our courts. *Ibid*.

The government of the United States succeeded to the exclusive

right of the British government to the lands occupied by the Indians; that right was originally founded on discovery and conquest. *Ibid.*

By the laws of Spain, the Indians had a right of occupancy, but they could not part with this right, except in the mode pointed out by the Spanish laws. *Chouteau v. Molony*, 16 H., 203.

The Indians have only a right of use, which, however, can only be divested by purchase or war. *Godfrey v. Beardsley*, 2 McL., 412.

A purchaser from an Indian tribe, after proclamation forbidding such purchases, could not acquire even the Indian title of occupancy. *Sparkman v. Porter*, 1 Pa., 457.

An occupant under an Indian grant, the Indians having afterwards resumed the title, and granted it to the crown, was a mere tenant at will of the king, whose occupancy no length of time could ripen into a title, by adverse possession. *Ibid.*

Purchases made at Indian treaties, held under the authority of the government, are rendered valid by their ratification, without any patent from the United States. *Mitchel v. United States*, 9 Pet., 713.

An unextinguished Indian title to lands, is not inconsistent with a seisin in fee by a State. *Fletcher v. Peck*, 6 Cr., 87.

(For other references see case of *Pine and Wood*, No. 558.)

TITLE XI.—MILITARY BOUNTY-LAND WARRANTS AND REVOLUTIONARY BOUNTY-LAND SCRIP.

No. 579.*

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE, July 20, 1875.

GENTLEMEN:—Section 2414 of the Revised Statutes of the United States, which Statutes embrace all laws, general and permanent in their nature, in force on the first day of December, 1873, provides that "All warrants for military bounty lands which have been or may hereafter be issued under any law of the United States, and all valid locations of the same which have been or may hereafter be made, are declared to be assignable by deed or instrument of writing, made and executed according to such form and pursuant to such regulations as may be prescribed by the Commissioner of the General Land-Office, so as to vest the assignee with all the rights of the original owner of the warrant or location."

Under the authority conferred by the said section, the following compilation of rules and regulations governing the assignment of bounty-land warrants is prepared for the guidance of Registers and Receivers of District Offices in ascertaining the titles to such warrants, when the same are presented in payment of entries of public lands, and for the information of all concerned.

To avoid, as far as possible, complications of land titles arising in consequence of the location of fraudulent or imperfectly assigned warrants, Registers and Receivers *are peremptorily enjoined to refuse all warrants* presented when the assignments thereof do not accord in every *essential particular* with the rules herein prescribed; and in all cases, *when the question of title is in doubt*, they must decline to receive the warrants until the holders thereof have submitted the same to this Office for examination, and have obtained a favorable decision thereon.

I. OF ASSIGNMENTS.

1. No assignment of a warrant executed *prior to the date of the issue thereof* can be recognized by this Office.—Revised Statutes, Section 2436.

2. The assignment is required to be *indorsed*, as far as practicable, upon the warrant transferred. Should it be found necessary, in any

*[No. 579 embraces, in addition to much new matter, the circulars dated March 30, 1870, August 2, 1871 and April 30, 1872, which it is deemed unnecessary to republish in this work. Circular of March 30, 1870, related to assignment and location of Bounty-Land Warrants; August 2, 1871, sought to prevent the assignment of warrants prior to their issuance; April 30, 1872, furnished a number of forms.—Ed.]

case, to write the entire assignment on a separate paper, *which can only occur when prior assignments have filled entirely the blank space on the warrant*, it must be so attached as to show unmistakably that the warrant assigned was in the hands of the party making the transfer. In such cases the signature of the assignor must be affixed in the presence of the officer before whom it is acknowledged, who must certify that, at the date of the assignment, the warrant was presented by and in possession of the assignor. (See Form No. 5.)

3. The same requirement must be observed in the preparation and acknowledgement of powers of attorney to *sell or locate* bounty-land warrants.

4. Blank assignments are *void*, and will not be recognized by this Office. The name of an assignee should be written in the assignment before the warrant is sent to the *local or General Land-Office*.

5. Each assignment must be attested by *two subscribing witnesses*: the *mark* of a *witness* will not be respected.

6. Parties in interest as assignees are not recognized as legal attesting witnesses to an assignment; neither can an officer take an acknowledgment of an assignment to himself.

7. The execution of assignments is required to be *acknowledged* by the assignor, in the presence of a register or receiver of a land-office, a judge or clerk of a court of record—when authorized to take acknowledgments—a notary public, justice of the peace, a commissioner of deeds resident in the State from which he derives his appointment, or a commissioner of a circuit court of the United States, who shall certify to the fact of the acknowledgment, and to the identity of the assignor; and the *official seal* of said court, notary public, or commissioner shall be affixed to the certificate. When the acknowledgment is taken before a justice of the peace, or other officer *without an official seal*, (except a register or receiver of a land office,) it must be accompanied by an additional certificate, under seal of the proper authority, establishing the *official character* of the person before whom the acknowledgment was made, and the *genuineness of his signature*. (See Form No. 15.)

Powers of attorney must be acknowledged in like manner.

8. Assignments executed by *unmarried females* must be accompanied by evidence that they have attained the age of twenty-one years; and when married women assign, their husbands must unite with them in making the transfer:

9. Assignments executed by a commissioner, or other designated person, alleged to be acting under a decree of court, must be accompanied by a duly certified copy of such decree, in which all the proceedings had in the case should be recited, and from which it must appear that due notice of the pending suit had been given, by publication or otherwise, to all the parties interested.

10. Where *two* assignments exist, executed by the same party but made in favor of different individuals, the person first named as assignee must execute a transfer in favor of the second grantee, whether the assignment to him had been completed or not.

11. When the name of a person has been *inadvertently* inserted in an assignment of a warrant, and *erased* therefrom, there should be filed an affidavit, duly authenticated, from such person, stating that his name had been *erroneously* written in said transfer, and erased with his *knowledge and consent*, and that he claims *no right or interest* in the warrant; when such person cannot be found, the title of the party

whose name has been written over the erasure will not be respected by this Office until the validity thereof has been satisfactorily affirmed by a court of competent jurisdiction. When the name of a *bona-fide assignee* has been erased from a transfer, an assignment from said assignee to the present holder of the warrant will be required to perfect the chain of title to the warrant.

12. When the assignment of a warrant is executed in a foreign country, and the acknowledgment thereof taken by an officer authorized by the laws thereof to perform such duties, the attestation of the American Consul in such country should be obtained as to the official character and genuineness of the signature of the person before whom the acknowledgment of the said assignment was made; or if the official character, &c., of such foreign magistrate is attested by a Consular Agent of such foreign government residing in this country, his official character must be certified by the diplomatic representative of such government in the United States. When such assignments are executed in a foreign language, duly authenticated translations thereof must be furnished. Secretaries of Legation and Consular Officers of the United States are authorized to take acknowledgments, but they must certify the same under their *official seals*.

13. When the persons named as warrantees are described in the warrant as being *minors*, their assignments thereof must be accompanied by satisfactory evidence that they had attained their majority at the date of the transfer.

14. When an assignment has been *executed and witnessed*, but not acknowledged, it may be proved in open court, but a certified transcript of the proceedings in the case must be attached to the warrant; when, however, such assignment has not been *properly attested*, it must be made *anew*.

15. When an assignment is made by an Indian residing among the whites, the prescribed form will be adopted with this single addition, that the officer taking the acknowledgment shall certify that the Indian is capable of contracting, also the amount paid to him for the warrant, and that he saw the same paid to the Indian.

16. Where it is made by an Indian holding tribal relations, his identity and ability to contract must be certified by the Superintendent of Indian Affairs, or Indian Agent, either of his own knowledge, or on the testimony of the chiefs, certifying to the amount paid for said warrant, that the same was paid in his presence, and that the transaction was fair and regular. In either case, if the amount paid is not a fair consideration, the assignment will be disregarded.

17. Where a warrant for the services of an Indian is issued, or descends to minors who no longer retain their tribal relations, it must be located or sold by a guardian duly appointed and authorized by the proper court for that purpose.

Where the minor or minors retain their tribal relations, the Agent or Superintendent must certify that they are entitled to the warrant under the laws, usages, and customs of the tribe; and, when sold or located, that it was done by the guardian or such proper representative as, according to said laws, usages, and customs, was fully authorized.

In all cases where the signature of the Superintendent or Indian Agent is herein required, the genuineness of the signature of that officer must be attested by the Commissioner of Indian Affairs.

18. Prior to June 3, 1858, military land warrants were regarded as *real estate*; consequently a transfer of such warrant before that date by an *administrator*, must be accompanied by evidence that the same was made in pursuance of an order of court for the sale of the real estate of the decedent.

But, by the Act of June 3, 1858, which was re-enacted by section 2444 of the Revised Statutes, bounty-land warrants were declared to be *personal chattels*, and as such to be assignable by the warrantees, by their widows in certain cases, by their heirs or devisees, or by the *legal representatives* of the deceased claimant, "for the use of the heirs or legatees only."

It follows that the right to assign enures to the assignees of the vendors named above, and to their heirs, devisees, or legal representatives; but these latter are *not* required to assign "for the use of the heirs only."

19. Where a warrant has been issued in the name of a deceased soldier who had applied therefor before his death, the title thereto is declared by the said section 2444, Revised Statutes, to vest in the *widow*, if there be one, and if there be no widow, then in the *heirs or legatees* of the claimant.

20. If the claimant died and left a widow, who also was deceased before the issue of the warrant, then the title thereto vests in the heirs or legatees of the warrantee.

21. To make a warrant issued in the name of a deceased person available, it should be accompanied by a certificate, under seal, from the proper court having probate jurisdiction, showing the fact of the death of the warrantee at a *specified date*, and stating whether he left a *widow*, giving her name if there was one. If there was no widow, the said certificate should state whether the warrantee died *testate* or *intestate*, and give the names of all his heirs at law, specifying such as are *adults* and such as are *minors*.

22. If it shall appear from such certificate that the warrantee died *before* the issue of the warrant and left a *widow*, the assignment of such widow, *her* heirs or legal representatives, will be regarded as a sufficient conveyance of the title to the warrant.

23. If the warrantee died *after* the issue of the warrant, or if he died *before* such issue and left no *widow*, the title vests in his heirs at law or legatees.

24. If he died *intestate*, his heirs, shown to be such by the required certificate of court, may assign the warrant, the adults for themselves, and the minors by their guardians, who shall file with the warrant a certified copy of their letters of guardianship, or a certificate from the clerk of the proper court stating that such letters had been issued, and that they were in force at the date of the assignment.

Or the administrator of the estate of the *deceased warrantee*, who died *intestate*, may assign the warrant "*for the use of the heirs only*," upon filing therewith a certified transcript of the letters of administration, or a certificate from the clerk of the proper court that the said letters had been issued, and that they were in force at the date of the assignment. (See Form No. 6.)

25. If the warrantee died *testate*, a certified transcript of the will must accompany the warrant. If the will *specifically* disposes of the warrant, the devisee or devisees may assign, if adults, in the usual form; if minors, by their guardians, as aforesaid. If the will does not *speci-*

fically dispose of the warrant, the executor of the estate of the warrantee may assign "*for the use of the heirs or legatees only*;" but in that case a certified transcript of the letters testamentary, or a certificate from the proper authority that such letters had been granted, and were in force at the date of the assignment, must accompany the transfer. (See Form No. 8.)

26 An assignment executed by an *administrator de bonis non with the will annexed* of the estate of the deceased warantee, must be prepared in accordance with the Form No. 8 prescribed to be used by an executor, and accompanied by evidence of his authority to act, as required in the case of an administrator of the estate of a warrantee who had died intestate.

II. AS TO LOCATIONS.

27. Military bounty-land warrants may be located upon any vacant public lands of the United States that are subject to sale at *private entry*, and they may be used in payment of pre-emption claims, or in commutation of homestead entries, even when the same embrace *unoffered lands*.

28. A warrant issued to several parties, or assigned to three or more persons, cannot be located if assigned by one of the owners to another, or to other persons, so as to invest any one of the parties with a greater interest than any other. In other words, each owner of a warrant, at the time of its location, must have an *equal* share or interest therein.

29. A warrant may be located either at a district land office, or through the agency of this Office.—Revised Statutes, Section 2437. If located at a district office, it must be accompanied by a tender of the fees to which the Register and Receiver are entitled, and by a written application to locate, containing a description of the tracts desired, signed by the locator or his attorney in fact. If by the latter, his authority to act must be evidenced by a power of attorney, which must be prepared in accordance with Form No. 14, and indorsed, if practicable, upon the warrant. (See Rule No. 2.)

30. If the location is made through *this Office*, the warrant must be sent to the Commissioner with a request that the same be located in a specified land district, and accompanied by a receipt from the Register and Receiver for the fees to which they may be severally entitled under Section 2238, Revised Statutes.

31. Each warrant is required to be distinctly and separately located upon a *compact* body of land; and if the area of the tract claimed should exceed the number of acres called for in the warrant, the locator must pay for the excess in cash; but if it should fall short, he must take the tract in full satisfaction for his warrant. A person cannot enter a *body of land* with a number of warrants without specifying the particular tract or tracts to which each shall be applied; and for each warrant there must be a distinct location, certificate, and patent.

32. Where the desired tract is subject to entry at a greater minimum than \$1.25 per acre, the locator, in addition to the surrendered warrant, must pay in cash the difference between the value of such warrant at one dollar and twenty five cents per acre, and that of the said land; or present a warrant of such denomination as will, at its legal value of \$1.25 per acre, cover the rated price of the tract, and pay the excess in value of the land, if any, in cash. For example: A tract of forty acres of land held at \$2.50 per acre, may be entered by the location of a war-

rant calling for 40 acres and the payment of \$50 in cash; or by locating thereon a warrant for 80 acres, the forty acres embraced in the entry being received in full satisfaction of the same; or a tract containing 80 acres rated at \$2.50 per acre, may be entered by the location of *two* eighty acre warrants, or of *one* for one hundred and sixty acres, and so on. It will be required, however, in the entry of a tract held at a greater minimum than \$1.25 per acre, by the location of *two or more* warrants, that *each warrant* shall be located upon a *specific legal subdivision thereof*, which legal subdivision shall be received in full satisfaction of the warrants surrendered therefor; and that the excess in value of the lands, if any there be, shall in each case be paid in cash. Hence, a tract containing forty acres or less, of double minimum lands, cannot be entered by the location of *two forty-acre warrants*.

33. A pre-emptor of lands held at one dollar and twenty-five cents per acre, may enter the tract embraced in his claim by the location of one, two, or more warrants; but each warrant must be applied to a specific subdivision thereof; that is, a warrant for forty acres must be located upon a described subdivision containing as nearly as possible forty acres of land; a warrant for eighty acres upon a tract embracing eighty acres, and so on. Where the pre-emption claim is composed of lands subject to entry at a greater minimum than \$1.25 per acre, the rules set forth in the preceding section will apply.

34. When a subdivision is fractional, a warrant approximating nearest the number of acres embraced therein may be located thereon, but the fractional excess in area must be paid for with cash, and will be conveyed in the same patent with the lands covered by the location of the warrant; a *legal subdivision*, however, other than those entered by the location of the warrant, will not be regarded as a legitimate fractional excess over such location, but will be required to constitute a *separate entry*. Thus, a person will not be permitted to make *one entry* of a quarter section of land, by the location of a warrant for 120 acres and a cash payment for the remaining subdivision.

35. Registers and Receivers of the local land-offices are entitled to the following fees for their services in locating warrants, and the several amounts mentioned must be paid *at the time of location*:

For a 40-acre warrant, \$0.50 each to the Register and Receiver; total, \$1.00				
For a 60-acre warrant, 0.75	do.	do.	do.	1.50
For an 80-acre warrant, 1.00	do.	do.	do.	2.00
For a 120-acre warrant, 1.50	do.	do.	do.	3.00
For a 160-acre warrant, 2.00	do.	do.	do.	4.00

36. In all cases the patent will be transmitted to the local office where the location was made, for delivery by the Register, unless the duplicate certificate of location shall have been previously filed in this Office with a request that the patent be delivered as requested by the person sending the same; and in no case will the patent be delivered, either by this or the local land-office, unless upon receipt of the duplicate certificate of location, or of an affidavit of ownership of the lands conveyed by the patent, and of the loss or destruction of the said duplicate certificate.

III. MISCELLANEOUS PROVISIONS.

37. Bounty-land warrants for military services, granted under general laws, are issued only by the *Commissioner of Pensions*; and

persons supposing themselves entitled to such warrants, should address their applications therefor to that officer.

38. Neither bounty-land warrants, nor the lands entered therewith, are liable to be sold, or made subject to the payment of any debt or claim incurred *by the warrantees*, until after the issue of the patent.— Revised Statutes, Section 2436.

39. Warrants that may have been *re-issued* under the provisions of Revised Statutes, section 2441, are subject to the same rules respecting assignments, that apply to original warrants; but, in default of an assignment from the warrantee, a decree of title must be obtained from a court of competent jurisdiction, and a transcript thereof appended to the re-issued warrant.

40. When an entry, made by the location of a warrant *properly assigned to the locator*, has been cancelled, the warrant will be returned, with a certificate attached thereto authorizing its *re-location* by the said locator or his assignees, without a further payment of location fees. In no case, however, will such a certificate be attached to a warrant the assignments whereof are not such as would receive the approval of this Office if presented for that purpose.

41. When a valid entry is withheld from patent on account of the objectionable character of the warrant located thereon, the parties in interest may procure the issue of a patent by filing in the office for the district in which the lands are situate, an acceptable substitute for the said warrant. The substitution must be made in the name of the *original locator*, and may consist of a *warrant, cash, or any kind of scrip legally applicable* to the class of lands embraced in the entry. *Two* warrants cannot be substituted for the *one* originally located, nor will any payment be received that would destroy the *identity* of the entry.

42. A *five-cent internal revenue stamp* is required to be affixed to each *assignment and certificate*—excepting certificates of acknowledgment,—and a *fifty-cent stamp* to each *power of attorney* executed and issued *after* October 1, 1862, and *prior* to October 1, 1872.

43. Each warrant transmitted to this Office for the purpose of obtaining the Commissioner's official approval of the assignments thereof, must be accompanied by the sum of *one dollar*, the legal fee for a certificate of verification; and each assignment indorsed upon or attached to such warrant must contain the *name of an assignee*.

If a certificate of approval should be attached to the warrant, a blank form of assignment will accompany the same, which may be used in making a subsequent transfer.

S. S. BURDETT, *Commissioner*.

FORM No. 1.

For the assignment of a warrant by the warrantee.

For value received I, A B, to whom the within warrant, No. —, was issued, do hereby sell and assign unto C D, of — county, —, and to his heirs and assignees forever, the said warrant, and authorize him to locate the same and receive a patent therefor.

Witness my hand and seal this — day of —, 187—. A B. [SEAL.]

Attest:

E F.
G H.

See Rules Nos. 2 and 5.

FORM No. 2

Of acknowledgment where the vendor is known to the officer taking the same.

STATE OF —, }
COUNTY, } ss:

On this — day of —, 187—, before me, personally came A B, to me well known, and acknowledged the foregoing assignment to be his act and deed; and I certify that the said A B is the identical person to whom the within warrant issued, and who executed the foregoing assignment thereof.

See Rule No. 7.

(Officer's signature.)

FORM No. 3.

Of acknowledgment where the vendor is not known to the officer, and his identity has to be proven.

STATE OF —, }
COUNTY, } ss:

On this — day of —, 187—, before me personally came A B and E F, of the county of —, in the State of —, and the said E F, being well known to me as a credible and disinterested person, was duly sworn by me, and on his oath declared and said that he well knows the said A B, and that he is the same person to whom the within warrant issued, and who executed the foregoing assignment; and his testimony being satisfactory evidence to me of that fact, the said A B thereupon acknowledged the said assignment to be his act and deed.

(Officer's signature.)

FORM No. 4.

For the assignment of a warrant by the assignee.

For value received I, C D, to whom the within warrant, No. —, was assigned, do hereby sell and assign unto E F, of — county, —; and to his heirs and assigns forever, the said warrant, and authorize him to locate the same and receive a patent therefor.

Witness my hand and seal this — day of —, 187—. C D. [SEAL.]

Attest:

G H.
I J.

See Rules Nos. 2 and 5.

FORM No. 5.

For the certificate of acknowledgment of an assignment when the same is written on a separate paper and attached to the warrant

STATE OF _____, }
_____ COUNTY, } ss.:

On this _____ day of _____, 187—, before me personally came _____, to me well known, and acknowledged the foregoing assignment to be _____ act and deed, and in my presence this day subscribed _____ name thereto; and I certify that the said _____ is the identical person to whom the annexed warrant, No. _____, was assigned, and that the said warrant, at the time of making the foregoing assignment, was presented by and in the possession of him, the said _____.

_____. [SEAL.]

See Rules Nos. 2 and 7.

FORM No. 6.

For the assignment of a warrant by an administrator.

For value received I, A B, administrator of the estate of C D, deceased, who died intestate, to whom the within warrant, No. _____, was issued, do hereby sell and assign, "for the use of the heirs only," unto E F, of _____ county, _____, and to his heirs and assigns forever, the said warrant, and authorize him to locate the same and receive a patent therefor.

Witness my hand and seal this _____ day of _____, 187—.

A B. [SEAL.]
Administrator.

Attest:

G H.
I J.

See Rule No. 24.

NOTE.—A certified copy of the letters of administration must accompany this assignment, or a certificate filed from the clerk of the proper court that said letters had been duly issued and *were in force at the date of the assignment.*

If the *date* of the death of the warrantee is not stated in the Letters of Administration, or other evidence as above mentioned, the same *must* appear in the *clerk's certificate* appended thereto.

FORM No. 7.

For the acknowledgment.

STATE OF _____, }
_____ COUNTY, } ss.:

On this _____ day of _____, 187—, before me personally came _____, to me well known, and acknowledged the foregoing assignment to be _____ act and deed, and in my presence subscribed _____ name thereto; and I certify that the said _____ is administrator of the estate of the warrantee _____, deceased, to whom the within warrant, No. _____, was issued, and who executed the foregoing assignment thereof.

Witness my hand and official seal the day and year above written.
(Officer's Signature.)

NOTE.—In assignments made by an administrator of the estate of a deceased *assignee*, the words "*for the use of the heirs only*" may be omitted, but in all other respects the foregoing form of assignment and acknowledgment will be required.

FORM No. 8.

For the assignment of a warrant by an executor.

For value received I, A B, executor of the estate of C D, deceased, who died testate, to whom the within warrant, No. —, was issued, do hereby sell and assign (*"for the use of the heirs only,"* or *"for the use of the legatees as mentioned in the will,"* as the case may be,) unto E F, of — county, State of —, and to his heirs and assigns forever, the said warrant, and authorize him to locate the same and receive a patent therefor.

Witness my hand and seal this — day of —, 187—.

A B. [SEAL.]
Executor.

Attest:

G H.
I J.

See Rule No. 25.

NOTE.—A certified copy of the *will*, and also of the *letters testamentary* or other proper evidence, under the seal of said court, showing that said executor was duly appointed and authorized to act as such *at the date of said assignment*, must accompany the same.

If the date of the death of the warrantee is not stated in the *letters testamentary* or other evidence, as above mentioned, it must appear in the *certificate of the clerk* appended thereto, as taken from the records of said court. The certificate of the acknowledgment may be the same as in Form No. 7, except that the word "*executor*" must be used instead of "*administrator*."

FORM No. 9.

For the assignment and acknowledgment of a warrant by the heirs at law of a deceased warrantee.

For value received we, A B, C D, and E F, the only heirs at law of G H, deceased, to whom the within warrant, No. —, was issued, do sell and assign unto I J, of — county, State of —, and to his heirs and assigns forever, the said warrant, and authorize him to locate the same and receive a patent therefor.

Witness our hands and seals this — day of —, 187—.

_____. [SEAL.]
_____. [SEAL.]
_____. [SEAL.]

Attest:

K L.
M N.

(See Rule No. 24.)

FORM No. 10.

For the acknowledgment.

STATE OF —, }
— COUNTY, } ss:

On this — day of —, 187—, before me personally came A B, C D, and E F, to me well known, and acknowledged the foregoing assignment to be their act and deed, and I certify that the said A B, C D, and E F, are the identical persons named in the attached certifi-

cate* as the only heirs at law of said warrantee, deceased, and who executed the foregoing assignment thereof.

Witness my hand and official seal the day and year above written.

(Officer's Signature.)

*For the evidence of the *death and heirship* above mentioned, it will be necessary to procure and attach a certificate, under seal, from a *court* having probate jurisdiction, showing that it has been proven to the satisfaction of said *court*, in *open court*, that said warrantee, E H, is dead, the *date* of his *death*, whether he died *testate* or *intestate*; whether or not he left a *widow* and who are his heirs and *only* heirs at law, with their respective ages. If any such heirs are *feme covert*s, their husbands must join in the assignment. ~~As~~ This rule will apply to *all* assignments made by married women.

FORM No. 11.

For the assignment of a warrant by a guardian.

For value received I, A B, guardian of the person and estate of C D, a minor warrantee, to whom the within warrant, No. —, was issued, (or a *minor heir at law*, as mentioned in the attached certificate—see the Note following *Form No. 10*,) do hereby sell and assign, *for the benefit of said minor*, unto E F, of the County of —, State of —, and to his heirs and assigns forever, the said warrant, and authorize him to locate the same and receive a patent therefor.

Witness my hand and seal this — day of —, 187—.

Attest: _____, [SEAL.]
Guardian.

G H.

I J.

(See Rule No. 24.)

FORM No. 12.

For the acknowledgment.

STATE OF —, }
COUNTY, } ss:

On this — day of —, 187—, before me personally came —, to me well known, and acknowledged the foregoing assignment to be his act and deed, and in my presence subscribed his name thereto, and I certify that the said — is guardian of the person and estate of said minor, and who executed the foregoing assignment thereof.

Witness my hand and official seal the day and year above written.

(Officer's signature.)

NOTE.—A certified copy of the letters of guardianship, or other legal evidence under the seal of the proper probate *court*, showing that the said guardian was duly appointed and authorized to act as such *at the date of said assignment*, must accompany the same.

FORM No. 13.

Of a power of attorney to sell a warrant.

Know all men by these presents, that I, (*here insert the name of the warrantee or owner of the warrant*), of the county of —, in the State of —, do hereby constitute and appoint —, of the county of —, in the State of —, my true and lawful attorney, for me and in my name, to sell and convey the within land

warrant, No. —, for — acres, issued under the act of —, 18—.

Witness my hand and seal this — day of —, 187—.

(*Warrantee's or Owner's signature.*) [SEAL.]

Signed in presence of—

A B.

C D.

See Rules Nos. 2 and 3.

NOTE.—The form of acknowledgment of a power of attorney must be the same as for the sale of the warrant, and both must be indorsed upon the warrant if there is sufficient blank space thereon that can be used for that purpose; otherwise, it must be certified to as in the certificate of acknowledgment stated in Form No. 5.

FORM No. 14.

For a power of attorney to locate a warrant.

Know all men by these presents, that I, (*here insert the name of the warrantee or assignee,*) of the county of —, in the State of —, do hereby constitute and appoint A B, of the county of —, in the State of —, my true and lawful attorney, for me and in my name, to locate land warrant No. —, for — acres of land, which issued under the act of —, 18—.

Witness my hand and seal this — day of —, 187—.

Warrantee's or Assignee's name. [SEAL.]

Signed in presence of—

C D.

E F.

See Rule Nos. 2, 3, and 29.

FORM No. 15.

Of the certificate of the clerk of the court, judge, or other person who is authorized to certify, under seal, to the official character of the officer who takes acknowledgments of assignments.

STATE OF —, }
— COUNTY, } ss:

I, A B, clerk of the court —, in the county and State aforesaid, hereby certify that John Jones, whose genuine signature is affixed to the above acknowledgment, was, at the time of assigning the same, a justice of the peace, (*notary public, or other officer,*) duly authorized by law to take such acknowledgment, and that full faith and credit are due to all his official acts as such.

Given under my hand and the seal of said court, this — day of —, 187—.

A B, Clerk. [SEAL.]

See Rule No. 7.

NOTE.—Where any acknowledgment is taken before a clerk of a court, judge, notary public, or other officer duly authorized by law, with their respective *official seals* affixed, the above certificate will not be required. Nor is such certificate required when the acknowledgment is taken before a Register or Receiver of a United States Land-Office.

No. 580.

CIRCULAR.*

Under the joint resolution of March 2, 1867.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,

June 14, 1870.

The following is a Joint Resolution of Congress, approved March 2, 1867, prescribing certain conditions, upon which, in addition to the evidence necessary to substantiate the same, all accounts, claims, or demands against the Government are to be paid by Officers of the United States:

"Joint Resolution prohibiting payment by any officer of the Government to any person not known to have been opposed to the Rebellion, and in favor of its suppression."

Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That, until otherwise ordered, it shall be unlawful for any officer of the United States Government to pay any account, claim, or demand against said Government which accrued or existed prior to the 13th day of April, A. D. 1861, in favor of any person who promoted, encouraged, or in any manner sustained the late rebellion; or in favor of any person who, during said rebellion, was not known to be opposed thereto and distinctly in favor of its suppression; and no pardon heretofore granted, or hereafter to be granted, shall authorize the payment of such account, claim, or demand, until this Resolution is modified or repealed: *Provided*, That this Resolution shall not be construed to prohibit the payment of claims founded upon contracts made by any of the Departments, where such claims were assigned or contracted to be assigned, prior to April 1, 1861, to creditors of said contractors, loyal citizens of loyal States, in payment of debts incurred prior to March 1, 1861.

Approved March 2, 1867.

On the 23d December, 1869, the Secretary of the Department, upon a submission of the question to him, decided that this Resolution applied to all cases of applications for *Revolutionary Bounty-Land Scrip*, and directed this Office, in the settlement of such claims, to enforce the observance of the following requirements, viz:

First. That every such claim shall be accompanied by a duly authenticated affidavit of the claimant that he or she, as the case may be, has not promoted, encouraged, or in any manner sustained, the late Rebellion, but was, during the continuance of the same, opposed thereto, and in favor of its suppression.

Second. By the affidavits of two or more disinterested witnesses, duly certified by the officer before whom the affidavits may be taken to be respectable and credible persons, that they have been personally acquainted with the claimant since the 13th day of April, 1861, and that his or her conduct during the war was that of a loyal citizen of the United States, and that they believe him or her to have been opposed to the Rebellion, and in favor of its suppression.

Third. The party applying must also take and file the oath prescribed in the Act of Congress approved August 6, 1861, as required by the Act of 17th July, 1862, as follows:

"I do solemnly swear (or affirm, as the case may be) that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith, allegiance, and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to

*Reversed: see Secretary's decision in Copp's Land owner, Vol. 2, page 54.

the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law: So help me God."

The affidavits and oaths herein referred to may be taken before any officer of the United States, or of the several States, authorized by law to administer oaths for general purposes. If taken before an officer not having an official seal, they must also be accompanied by a certificate, under seal from the proper officer, as to the official character and signature of the officer before whom they were taken, and appropriate revenue stamps affixed in all cases.

A full compliance with these Rules and Regulations, with a due observance of the other requirements heretofore specially set forth in *Scrup Claims* in the Circulars of this Office of December 20, 1852, and June 30, 1854, will enable us to dispose of these cases, under the direction of the Department, with all promptness, as soon as reached in their regular order, and save trouble, expense, and delay to applicants.

JOS. S. WILSON, *Commissioner*.

No. 581.

RODERICK RUTLAND.

Where a military bounty-land warrant is regular on its face, though in reality improperly obtained, and upon a forged endorsement located, and the location has been patented without protest or notice of loss from the rightful owner, the Interior Department can afford no redress in the premises.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., February 19, 1874.

SIR:—I have considered the appeal of Roderick Rutland from your decision of September 27, 1873, in the matter of his application invoking the aid of the Department to place him in the enjoyment of certain alleged rights under a military land-warrant issued to him under the act of March 3, 1855, and asserted to have been forcibly taken from him, and, without his knowledge and upon a forged endorsement, located on certain land of the United States in the State of Missouri.

Admitting the statement of the claimant to be true, I am of the opinion that he forfeited all right to the protection of your Office by his own laches in the matter, in this, that he did not notify your Office of the loss, or take any steps whatever for the protection of his own rights or the prevention of fraud, for eight years after the loss occurred. *Vigilantibus et non dormientibus serviunt leges.* The assignment of the warrant and its location, as shown by your records, were *prima facie* regular and valid; no objection to the perfection of the location was made by any one, and in the regular course of business the same was passed to patent and actually patented three years before the claimant ever notified the Department of his loss, or took any steps whatever to protect his rights.

I agree with you that the application, which is in effect to have the patent declared void, should be rejected. I think the remedy, if any there be, is in the courts. Your decision is *affirmed*, and the papers transmitted herewith returned.

Very respectfully,

B. R. COWEN, *Acting Secretary*.

HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 582.

R. G. ORWIG.

The Substitution of Two Warrants for One cannot be permitted.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Dec. 22d, 1874.

R. G. ORWIG, Esq., *Des Moines, Iowa* :

SIR:—In reply to your letter of the 12th instant you are advised that the substitution of two warrants in lieu of one with which an entry had been made cannot be permitted.

Such a proceeding would destroy the identity of the original location, and necessitate the division of the entry made therewith into two parts, forming two new entries. The idea of a substitution is to make payment for the original entry, which must be preserved intact.

Very respectfully,

S. S. BURDETT, *Commissioner*.

No. 583.

H. M. CHACE.

Instructions Relative to Location of Revolutionary Bounty Land Scrip.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Dec. 16, 1874.

H. M. CHACE, Esq., *Cawker City, Kansas* :

SIR:—You are informed, in answer to your two (2) letters of the 7th instant, that a change has been made in the circular of this Office of August 17, 1853, in relation to the application of Revolutionary bounty land scrip, referred to by you as set forth in vol. 1 of "Lester's Land Laws," &c., page 682. By the "circular" of this Office, of date July 1, 1871, a copy of which is herewith enclosed, the 5th section of which relates to the use of said scrip in payment, in the form of money, receivable in satisfaction of lands subject to sale at private entry, "and also in payment of unoffered land which may be embraced by pre-emption entries."

The scrip in question has by law a fixed money value, viz., \$1¹⁰/₁₆ per acre; and where any payment is to be made for a legal subdivision of land, the aggregate amount of several pieces of scrip to the value in cash of the land desired to be paid for thereby, can be computed and so applied. But no repayment of any excess in value of said scrip can be made, but may be denoted in the relinquishment as applicable to any other tract.

You are further advised that no fees are due the local land officers upon the receipt of Revolutionary bounty land scrip in payment of lands properly locatable therewith, as they receive their commissions thereon as in the case of sales for actual cash.

Very respectfully, your obedient servant,

S. S. BURDETT, *Commissioner*.

No. 584.

RULES AND REGULATIONS FOR ISSUING REVOLUTIONARY
BOUNTY-LAND SCRIP,

Under the Act entitled "*An Act making further provisions for the satisfaction of Virginia Land Warrants*," approved August 31, 1852, (United States Statutes at Large, Vol. 10, page 143,) in connection with the Supplemental Act, approved June 22, 1860, "*to declare the meaning*" of the said law of August 31, 1852. (United States Statutes at Large, Vol. 12, page 84.)

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE, July 20, 1875.

1. The Acts of Congress above mentioned, copies of which are hereto annexed, authorize the Secretary of the Interior to issue land-scrip in favor of the present proprietors of all unsatisfied outstanding military land warrants, or parts of warrants, fairly and justly issued or allowed prior to the 1st day of March, 1852, by the proper authorities of the Commonwealth of Virginia, and consequently, embrace the 10 per centum deducted from the warrants filed under the Act of March 3, 1835; the warrants or parts of warrants located in Ohio, which conflict with previous valid locations; and also those located in Kentucky, on which the State refused to issue patents, and which locations therein have been lost by interference with prior valid claims.

It is provided by the said Act of June 22, 1860, that if any claim has been legally "*allowed*" by Virginia, prior to March 1, 1852, the warrants founded thereon, though issued *after* said date, may be satisfied by the grant of scrip in lieu thereof, if the case is found to conform with "the principles already recognized by the Department of the Interior in the execution of the provisions of the said act" of August 31, 1852.

2. The Secretary of the Interior having charged this Office with the execution of the laws in question, it is required that all warrants or parts of warrants embraced thereby, with the evidence in virtue of which the same were allowed and issued, shall be filed therein.

The evidence of service in each case, upon which the allowance of the claim was made, is to be found in the office of the Secretary of State, at Richmond, Virginia, and the proof upon which any designated warrant was issued is filed with the Register of the State Land-Office at the same place. Certified copies from both these offices, of the evidence filed therein, must accompany the warrant when presented for satisfaction.

If a "revision of the proofs" should fail to satisfactorily establish the fact that any warrant surrendered was fairly and justly issued, in pursuance of the laws of Virginia, then "additional testimony," as provided by said Act of August 31, 1852, will be received.

All assignments of warrants made since the passage of this law, (August 31, 1852,) must be, in the presence of two witnesses, acknowledged before a justice of the peace, who must certify to the identity of the assignor, and whose official character must be certified to, under seal, by the clerk of the court.

The cases will be taken up and examined in the order in which they have been or may be filed in this Office, and, where the evidence is satisfactory, scrip will be issued; where it is deficient, in whole or in part, the parties will be advised, and the case suspended till the deficiency is supplied; or, if it is ascertained that the warrant was not fairly and justly issued, the claim will be rejected.

3. All warrants issued for services in the State or Continental line,

or State navy, prior to June 1, 1792, when the State of Kentucky was admitted into the Union, should be accompanied by a certificate, under seal from the Register of the Kentucky Land-Office, stating that such warrants have not been patented in that State.

Continental line warrants issued since that period, and prior to January 1, 1852, should be accompanied by a certificate from the surveyor of the Virginia Military District in Ohio, stating that no location or survey has been made of such warrants; or if a location and survey, or either, has been made, when, the amount, in whose favor, &c.

4. In all cases where a warrant has been lost, mislaid, or destroyed, the present proprietor must file a duplicate copy thereof, with a certificate from the Register that the original has not been surrendered in exchange for any other warrant or warrants. After the warrant has been filed, with proofs showing the loss of the original, the present proprietor must give six weeks' public notice in a newspaper published near the domicile of the party in interest, and another in the city of Washington, describing the warrants, service rendered, amount, date, and number, stating the loss of the original, and the intention of applying to this Office for scrip for the same.

A bond of indemnity to the United States must be filed, duly executed and acknowledged by the party in interest, and properly certified, with sufficient sureties, to be approved by some court of competent jurisdiction, or other proper officer, in the penalty of double the value of the lost or destroyed warrant, estimating the same at \$1.25 per acre, and conditioned to indemnify and save harmless the United States from any and all costs, charges and expenses, in case that, at any time after the issue of scrip, any claim to the original warrant should be legally substantiated, of a character adverse to the title of the present claimant.

Upon a compliance with these requirements, the duplicate warrant will remain *three months* on file in this Office after the expiration of such notice, and if the title is not contested at that time, the same will be commuted into scrip for the amount found due thereon.

5. Where warrants, having been partly satisfied by patent from the State of Kentucky, remain on file in the office of the Register of the Land-Office of that State, and therefore cannot be produced, certified copies of them from the Register of the Land-Office at Richmond must be filed, and be accompanied by a certificate from the Register at Frankfort, Kentucky, describing the warrant, survey, &c.

6. The scrip will be issued in pieces or certificates of eighty acres, or one hundred dollars each, except for fractions, to which claimants may be entitled after deducting the eighty-acre certificates. "When there are more persons than one interested in the same warrant," scrip will issue to each person "for his or her proportion of the warrant," if desired.

7. When scrip is claimed, located, or sold by the "guardian of an infant," or "the husband of a feme covert," the evidence of their being such guardian or husband, fully authenticated, must be produced.

8. The scrip is "assignable by indorsement, attested by two witnesses," in the following manner, upon the back of the certificate:

For value received, (I, or we, as the case may be,) the present proprietor— of the within certificate of scrip, do hereby sell and assign the same to _____, of _____, and his heirs and assigns forever.

Witness my hand and seal this the _____ day of _____, 187

E F. [SEAL.]

Attest.

A B.

C D.

9. This scrip is "receivable in payment of any lands owned by the United States subject to sale at private entry," and can be applied at the rate of \$1.25 per acre, in the same manner as money, in all cases where the tract applied for contains the area specified in the scrip, or more; where it contains less, the excess of the scrip cannot be refunded in money, but may be denoted in the relinquishment as applicable to any other tract. It can also be used in commutation of Homestead entries, and can be applied in payment of offered or unoffered lands which may be embraced by Pre-emption entries

10. When located, this scrip must be relinquished by the legal owner thereof after the following form, viz:

I (or we) do hereby relinquish to the United States the within certificate, in payment (or in part payment, as the case may be) of the _____ half of the _____ quarter of section No. _____, in township No. _____, of range No. _____, located in the name of _____, at the land-office at _____, this _____ day of _____, 187—.

(Signed) A B. [SEAL.]

Witnesses:

C D.

E F.

11. No acknowledgment of the transfer of said scrip is required, the same being declared by law "assignable by indorsement, attested by two witnesses." The relinquishment may be executed in the same manner.

No fees are required to be paid upon the location thereof—the same being regarded as money; and the local land officers receive from the United States Treasury their commissions upon the surrender thereof, as in the case of entries made with actual cash.

12. Any person prosecuting this class of claims, either as attorney or on his own account, will be required, in accordance with the provisions of sections 3478 and 3479, United States Revised Statutes, to subscribe to and file the oath of allegiance, and to support the Constitution of the United States, as follows, viz:

"I do solemnly swear (or affirm, as the case may be) that I will support, protect, and defend the Constitution and Government of the United States against all enemies, whether domestic or foreign, and that I will bear true faith and allegiance and loyalty to the same, any ordinance, resolution, or law of any State convention or legislature to the contrary notwithstanding; and further, that I do this with a full determination, pledge, and purpose, without any mental reservation or evasion whatsoever; and further, that I will well and faithfully perform all the duties which may be required of me by law: So HELP ME GOD."

The oath herein referred to may be taken before any officer of the United States, or of the several States, authorized by law to administer oaths for general purposes. If taken before an officer not having an official seal, it must also be accompanied by a certificate, under seal,

from the proper officer, as to the official character and signature of the officer before whom the same was taken.

"VIRGINIA MILITARY DISTRICT—KENTUCKY."

The following rules have been adopted by this Office for the guidance of those who make application for the satisfaction of entries and surveys founded on Virginia military warrants located in Kentucky prior to June 1, 1792, and which have been lost, either in whole or in part, by interference with previous valid locations, founded either upon Virginia military warrants or State Treasury warrants, conformably with the provisions of the act of Congress approved "August 31, 1852," providing for the further satisfaction of Virginia military warrants.

1st. It will be necessary to file either the original warrants or duplicates of the same, together with a certificate from the Register of the Land-Office at Frankfort, Kentucky, bearing his official seal, setting forth specifically the cause of interference, and the amount thus lost, giving the number of the survey, amount for which it calls, in whose name made, and the date of the same, together with the same data in relation to the survey with which it conflicts; and also, whether there is any evidence filed in his office showing that the locators of the surveys or the patentees for which application is made for the amount of interference have conveyed the same or any portion of it.

2d. Copies of the surveys thus lost, and those with which they interfere, with the metes and bounds accurately set forth, must be forwarded, authenticated by a certificate from the Register under his hand and seal.

3d. When patents have issued before such interferences were discovered, it will be necessary to file certified copies of the originals, together with certificates from the proper officers of the county where the land is situated, setting forth that there is no evidence on file showing that the patentees, their heirs-at-law or devisees, have conveyed the same.

4th. The patentees, their heirs-at-law or devisees, must file a deed of relinquishment of the land patented to them or their ancestors, to the United States and to the State of Virginia, which deed must be recorded in the county court where the land is located.

5th. In all cases where there is doubt as to the correctness of the amount of such interferences, and copies of the original surveys cannot be procured, it will be necessary to have a re-survey made, and the amount of such interferences decreed by judgment of the proper court of the county where the land is located.

When applicants have complied with the foregoing rules and filed the required evidence as to service and proprietorship, the claims will be taken up for examination in their regular order, and disposed of at the earliest moment practicable.

"VIRGINIA MILITARY DISTRICT—OHIO."

1. Where application is made for the issue of bounty-land scrip founded upon Virginia military warrants entered in said district, and which locations are claimed to be in conflict with former valid entries and surveys, the claim therefor must be accompanied, in addition to the evidence of service, heirship, and present proprietorship, with the official certificate of the surveyor of the Virginia Military District, whose

office is at Chillicothe, Ohio, setting forth the number and amount in acres of the warrant, when and for whose service issued, when entered or surveyed, and with what entry and survey it is found to interfere, and the date when the latter were made.

This certificate must show the precise amount of the warrant lost by the interference in question, and should give the name of the county in Ohio in which the land located is situate.

2. A certificate from the auditor of the county in which the said locations have been made must be produced, showing that the lands claimed to have been lost by interference have not been sold for taxes.

3. The certificate of the recorder of deeds for said county must also be obtained, to the effect that the lands included in the entry and survey in question have not been sold or conveyed, or charged with any incumbrance by or through the party making the said location, or his grantees.

4. If a patent has been issued for lands in said district, and the whole or any part thereof been declared by the judgment of a court of competent jurisdiction to be invalid, by reason of conflict with a previous valid title, upon filing in this Office a certified copy of the record of such decision, and the return of the patent with a relinquishment endorsed thereon, duly recorded, from the patentee to the United States, and accompanied by the certificate of the auditor and recorder as above mentioned, the Virginia military land warrant embraced in said patent will be commuted into scrip in the name of the present proprietor thereof, for the amount so established to have been previously satisfied.

Applications under these rules must also be accompanied by the evidence of service, &c., as hereinbefore prescribed.

RULES AND REGULATIONS.

FOR ISSUING CERTIFIED COPIES IN LIEU OF LOST OR DESTROYED REVOLUTIONARY BOUNTY-LAND SCRIP.

1. The claimant must make and file an affidavit, duly certified, setting forth all the particulars as to the loss or destruction of the original scrip.

This affidavit, if found satisfactory, will be regarded as a *temporary caveat*, and will *suspend* for the time being, and until the other requirements of this Office can be answered, the issue of any **PATENT** founded upon the location of any such original scrip.

2. Publication must be made immediately upon the filing of said affidavit for six successive weeks—once in each week—in a newspaper of general circulation, published at or nearest the domicile of the party in interest, and also in a newspaper of the city of Washington, D. C., stating the loss or destruction of the original scrip, fully describing it, and giving **NOTICE** that at a specified time application will be made to this Office for the issuing of a certified copy thereof.

3. Proof of the publication of such notice for the required time, made by the proprietor of such papers, or other competent party, must be filed in this Office with copies of said notice.

4. A bond of indemnity to the United States must be filed, duly executed and acknowledged by the party in interest, and properly certified, with sufficient sureties, to be approved by some court of compe-

tent jurisdiction, or other proper officer, in the penalty of double the value of the lost or destroyed scrip, estimating the same at \$1 25 per acre, and conditioned to indemnify and save harmless the United States from any and all costs, charges, and expenses, in case that, at any time after the issue of such certified copy, any claim to the original scrip should be legally substantiated of a character adverse to the title of the present claimant.

FORM OF NOTICE.

WHEREAS, on the — day of —, 187—, United States Revolutionary land-bounty scrip No. —, for — acres, was issued by the Department of the Interior, under the act of Congress of August 31, 1852, (*or, if under any former act, mentioning it,*) in part satisfaction of Virginia (*or United States*) military land warrant No. —, granted for the services of (*name of officer, soldier or seaman,*) who was a (*description of service*) in the Virginia Continental (*or State*) line, (*or State navy,*) (*or in the United States Continental line;*) and WHEREAS said scrip has been lost or destroyed, NOTICE is hereby given that on the — day of —, 18—, application will be made to the Commissioner of the General Land-Office, at the city of Washington, D. C., in pursuance of the rules and regulations of his office, for the issue of a certified copy in lieu of said lost or destroyed scrip, the undersigned being the present lawful owner (*by assignment or otherwise*) thereof.

Circulars of December 20, 1852, June 30, 1854. and March 1, 1862.
S. S. BURDETT, *Commissioner.*

An Act making further provisions for the satisfaction of Virginia land warrants.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That all unsatisfied outstanding military land warrants, or parts of warrants, issued or allowed prior to the first day of March, eighteen hundred and fifty-two, by the proper authorities of the Commonwealth of Virginia, for military services performed by the officers and soldiers, seamen or marines, of the Virginia State and Continental lines, in the army or navy of the Revolution, may be surrendered to the Secretary of the Interior, who, upon being satisfied, by a revision of the proofs, or by additional testimony, that any warrant thus surrendered was fairly and justly issued, in pursuance of the laws of said Commonwealth, for military services so rendered, shall issue land-scrip in favor of the present proprietors of any warrant thus surrendered, for the whole or any portion thereof yet unsatisfied, at the rate of one dollar and twenty-five cents for each acre mentioned in the warrant thus surrendered, and which remains unsatisfied; which scrip shall be receivable in payment for any lands owned by the United States subject to sale at private entry; and said scrip shall moreover be assignable by indorsement, attested by two witnesses. In issuing such scrip the Secretary is authorized, when there are more persons than one interested in the same warrant, to issue to each person scrip for his or her portion of the warrant; and where infants or feme covert may be entitled to any scrip, the guardian of the infant, and the husband of the feme-covert, may receive and sell or locate the same: *Provided,* That no less than a legal subdivision shall be entered and paid for by the scrip issued in virtue of this act.

SEC. 2. *And be it further enacted*, That this act shall be taken as a full and final adjustment of all bounty-land claims to the officers and soldiers, seamen and marines, of the State of Virginia, for services in the war of the Revolution : *Provided*, That the State of Virginia shall, by a proper act of the legislature thereof, relinquish all claim to the lands in the Virginia military land district in the State of Ohio.

SEC. 3. *And be it further enacted*, That in settling the claims of the State of Ohio, under the acts of March second, eighteen hundred and twenty-seven, and May twenty-fourth, eighteen hundred and twenty-eight, granting lands to said State for canal purposes, the same principles shall be acted upon as have been applied under the provisions of the act of May the ninth, eighteen hundred and forty-eight, entitled "An Act in addition to an act therein mentioned," for the settlement of the claims of the State of Indiana accruing under the said act of March the second, eighteen hundred and twenty-seven.

Approved, August 31, 1852.

An Act to declare the meaning of the act entitled "An Act making further provisions for the satisfaction of Virginia land warrants," passed August thirty-one, eighteen hundred and fifty-two.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior, in executing the provisions of the act passed August thirty-one, eighteen hundred and fifty-two, entitled "An Act making further provisions for the satisfaction of Virginia land warrants," be required so to construe the same as to authorize the satisfaction in scrip of all warrants or parts of warrants issued on allowances made by the executive of Virginia prior to the first day of March, eighteen hundred and fifty-two, coming within the principles already recognized by the Department of the Interior in the execution of the provisions of the said act, and whether issued before or since the first day of March, eighteen hundred and fifty-two : *Provided, however*, That no warrant or part of a warrant shall be satisfied in scrip, founded or issued on any allowance made by the executive of Virginia since the first day of March, eighteen hundred and fifty-two.

Approved, June 22, 1860.

TITLE XII.—OREGON DONATION CLAIMS.

No. 586.

WOODWARD ET AL., v. STRICKLER.

Donation claim under the act of September 27, 1850, (9 Stat., 497,) for Oregon Territory.

Held—That Strickler's heirs were entitled to purchase the land at \$1.25 per acre.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, November 10, 1871.

SIR:—I have considered the case of *John A. Woodward and H. H. Edwards, homestead claimants, v. The Heirs-at-law of Wm. A. Strickler, deceased, donation claimant.*

The land in controversy is the E. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ Section 13, T. 25 N., R. 3 E., and W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, and Lot 3 of Section 18, T. 25 N., R. 4 E., Olympia, Washington Territory.

The local officers differed in opinion, the Register deciding in favor of the donation claimants, holding that they should be allowed to commute their donation claim and purchase the land at \$1.25 per acre, and the Receiver deciding in favor of the homestead claimants.

The Commissioner decided in favor of the heirs of Strickler, and granted them the land as a donation.

Woodward and Edwards have appealed to the Secretary.

Strickler became a resident of the Territory of Oregon in November, 1850, and went upon the land March 1, 1854. April 7, 1855, he filed notification alleging residence and cultivation from date of settlement to date of filing, which allegation is supported by the affidavits of four disinterested witnesses. He claims the land under the donation act of September 27, 1850, and its amendments.

Shortly after this he was forced to leave his claim by danger from Indian hostilities, which made it unsafe for him to return till the fall of 1857 or spring of 1858.

The land was unsurveyed at the time he filed upon it. After survey, and on the 16th of June, 1857, he amended his notification so as to make the boundaries of his claim correspond to the lines of the government survey.

April, 1856, he was appointed Register of the Land-Office at Olympia, and continued in that position until December 28, 1858. Whether he then returned to his claim or not, is involved in doubt.

A letter from Hon. S. Garfield, who was Receiver of the Land-Office at Olympia at the same time Strickler was Register, states that he (Strickler) "frequently asserted his intention to return to his claim as soon as it was safe from Indians, but his loss of mind prevented the execution of his purpose."

Before leaving this position his mind became so much affected that he was unable to transact any business, and was obliged to employ a clerk, who performed all his official duties.

His malady increased until in 1859 he wandered off, and has not since been heard of.

Aug. 27, 1868, Henry L. Gessler, on the presumption of Strickler's death, took out letters of administration on his estate, and January 11, 1869, made application to the Land-Office for a patent to the land.

January 2, 1869, Woodward and Edwards made homestead filings covering the tracts in controversy.

Strickler's residence up to June 1, 1854, was in a house that was included in the boundaries of his original notification, but left out of his amended filing. After June 1, 1854, he lived in the one-half of a double house, standing half on his claim and half on the neighboring claim of one Ross.

This house was two stories, had a partition running through the centre of it on the line of the boundary between the claims, and had an entrance on each claim.

During the early part of his settlement he was engaged in partnership with H. L. Gessler and John Ross in erecting a saw mill and dam, but the project was abandoned on account of the decline in the price of lumber.

The fourth section of the Act of September 27th, 1850, 9 Stat., 497, provides that there shall be granted to every citizen of the United States, above the age of eighteen years, who shall become a resident of the Territory of Oregon, (now Washington,) before the first day of December, 1850, and who shall have resided upon and cultivated the same for four consecutive years, the quantity of three hundred and twenty acres of land, if a single man. And that where a party shall have died before patent issues, the children or heirs of the deceased shall be entitled to the interest of the deceased in equal proportions, except where the deceased shall otherwise dispose of it by testament duly and properly executed.

The Act of February 14, 1853, 10 Stat., 158, provides that settlers shall, in lieu of the term of continued occupation after settlement, be permitted, after occupation for two years, to pay for the land at the rate of one dollar and twenty-five cents per acre.

The Act of July 17, 1854, 10 Stat., 305, reduces the necessary time of occupancy before purchase to one year.

Strickler's actual occupancy of the land from March 1, 1854, to April 7, 1855, and constructive occupancy from that time till the middle of February, 1858, and during the danger from Indian hostilities, makes a period of a little less than four years. Had he then returned to the land he might possibly have been able to perfect his claim to it as a donation. This he did not do. He had been appointed Register of the Land-Office at Olympia, in April, 1856, and continued to act in that capacity up to December 28, 1858. The time he was in this position after the danger from Indian hostilities was over cannot be construed to be occupation of his claim, or allowed to his credit on the necessary four years occupancy. The fact of his residing on and cultivating the land for more than one year is well established, and were he living he would be entitled to purchase it, under the amendatory acts of 1853 and 1854, at the rate of \$1.25 per acre. Being dead, his heirs succeed to his interest by the express provisions of the fourth Section of the act of 1850.

I therefore recommend that the Commissioner's decision be modified so as to allow the heirs of Mr. Strickler to purchase the land at \$1.25 per acre, upon complying with the requirements of the donation laws.

Very respectfully,

W. H. SMITH, *Assistant Attorney General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, Nov. 14, 1871.

No. 587.

DAVID S. MAYNARD.

Donation Claim under the act of 1850, September 27th.

Held—That a wife who had been divorced before the four years of cultivation had expired was not entitled, and that a wife who had been married after December 1, 1850, was not entitled.

Decision by the Secretary, March 1, 1873.

No. 588.

WARWICK AND DAVIS.

Entries under the donation acts *prima facie* regular and valid cannot be set aside on the allegation of fraud, made by third parties, who had no interest in the land prior to the entries.

The donation act approved February 14, 1853, does not limit entries under it to surveyed land.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., May 29, 1874.

SIR:—I have examined the appeals of Wilkins Warwick and A. J. Davis from your decision of July 5, 1873, cancelling their respective entries made under the donation act of September 27, 1850, and the several acts amendatory thereof, for certain lands in T. 25 S., R. 13 W., Oregon.

The facts in these cases are correctly recited in your decision, from which it appears that the claimants fully complied with all the requirements of the donation act, made final proof, entered the land claimed, and paid for the same prior to October, 1856. The present contests were initiated during the years 1869 and 1870, at the instance of certain persons who, by *ex parte* evidence filed upon appeal, appear to be interested in a certain town site recently located upon the lands in question. At the date named these parties appeared before the local officers and alleged substantially and in legal effect, fraud in the original entries. Notice of trial was given by publication, the citation setting forth that the charge was one of "abandonment." No appearance being entered by the defendants, the local officers decided that the entries should be cancelled. The claimants appealed to your office, and were there represented by counsel. They are now so represented before the Department, and it is stated on their behalf in argument that shortly after his entry Warwick sold the land entered by him to Davis, and that thereafter, and subsequently to his own entry, Davis removed from Oregon, and has since his removal been a resident of Helena, Montana.

It is evident, from a consideration of the facts recited, that these cases are of that class whose entries, *prima facie* regular and valid, are sought to be set aside on the ground of fraud, by third parties alleging and claiming no prior interest in the land. The Department has re-

peatedly held that proceedings of this character cannot be maintained, and I apply the well-settled rule to this case.

The controversy, as presented upon appeal, and as apparently presented to your office, however, raises a single question of law, relating to the construction of the first section of the act of Congress approved February 14, 1853, (10 Stat., 158,) under which these entries were made. It is admitted that at the date of the entry the lands were unsurveyed, and it is claimed, and so held by your office, that the act limits entries under it to surveyed lands.

I am unable to agree with you in this construction. The language used is somewhat ambiguous, but it is undoubtedly susceptible of a construction to include unsurveyed land, and such a construction seems to be in strict conformity with the spirit of the act and the objects intended to be accomplished by its passage. The construction adopted is extremely technical, and I think contrary to the policy of the act, which was a benevolent statute, and as such has received in all adjudicated cases arising under it an exceptionally liberal interpretation. (*Stark v. Stair*, 6 Wall., 402; *Silver v. Ladd*, 7 Wall., 219.) Under these circumstances, more especially in view of the principles enunciated by the Supreme Court in the cases cited, I am constrained to adopt a more liberal construction than the one followed by you, and I accordingly decide upon the merits of the case that the entries in question were valid, limiting that of Warwick to 160 acres, and should be passed to patent with the above limitation.

Your decision is reversed, and the papers transmitted with your letter of November 19, 1873, are herewith returned.

Very respectfully,

C. DELANO, *Secretary*

HON. W. W. CURTIS, *Acting Commissioner General Land-Office.*

No. 589.

ROMAN CATHOLIC MISSION OF ST. JAMES.

Claim under act of August 14, 1848 (9 Stat. 323) for 640 acres of land, Washington territory.

Held—That the Commissioner of the General Land-Office has jurisdiction to hear and determine these Mission Claims. This overrules the opinion of Atty-Genl. Bates, (11 Op. 47,) and is sustained by the present Atty-Genl. Williams. See his letter in this case.

That the act gave an immediate vested right.

That only the land actually occupied and shown with reasonable certainty to have specific boundaries passed under the act. There must be such an assertion of claim as would be notice to any other persons attempting to gain possession; such as a marking out of the claim by stakes or blazed trees, &c.

Decision by Acting Secretary Cowen, May 10, 1872.

TITLE XIII.—SUSPENDED ENTRIES.

No. 591.

BARNARD WARDEN, ET AL.

These parties made homestead entries in good faith, but failed to make final proof within seven years.

No adverse claims; one was sick, one lame, one had lost his receipt, &c. Several were ignorant of the law.

Held—That these were cases of ignorance, accident and mistake, and that the proofs should be received under the acts of August 3, 1846, (9 Stat. 51,) and June 26, 1856, (11 Stat. 22,) and referred to the Board consisting of the Secretary of Interior, Attorney-General and Commissioner of the General Land-Office.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
WASHINGTON, May 15, 1871.

SIR:—I have considered the matter relating to the homestead entries of Barnard Warden and others, referred to you by the Commissioner of the General Land-Office by his letter of the 24th of February, 1871.

It appears that the parties have severally made homestead entries in good faith, and have in all respects complied with the law, except that they have failed to make final proof within seven years from the date of their respective entries.

There are no adverse claims. A majority of the parties give ignorance of the law as an excuse for not making the proof within the time.

One was sick, one was lame, one had lost his receipt, one lived at a great distance from the land-office, and one made a mistake in estimating the time that had elapsed.

By the act of August 3, 1846, (9 Stat. 51,) it was *Provided*, "That the Commissioner of the General Land-Office be, and is hereby authorized and empowered, to determine *upon principles of equity and justice* as recognized in the courts of equity; and in accordance with the general rules and regulations to be settled by the Secretary of the Treasury, the Attorney General and Commissioner conjointly, consistently with such principles, all cases of suspended entries now existing in said land-office, and to adjudge in what cases patents shall issue upon the same:

"*Provided, however*, That such adjudications shall be made within two years from the passage of this act, and be first approved by the Secretary of the Treasury and the Attorney General, and shall operate to divest the United States of the title of the land embraced by such entries, without prejudice to the rights of conflicting claimants."

It was further provided that patents should issue in all cases that were confirmed by the board. Afterwards, and on the 26th of June, 1856, the following act was passed: "*Be it enacted, etc.*, That the several provisions of the act approved March third, eighteen hundred and fifty-three, in relation to suspended entries of public lands, and the

several provisions of the act approved August third, eighteen hundred and forty-six, in relation to suspended pre-emption land claims, be, and the same are hereby revived and continued in force, and those provisions are hereby declared to be applicable to all cases of suspended entries and locations which have arisen since said acts were passed or which were omitted to be acted upon under either of said acts, as well as to all cases of a similar kind which may hereafter occur, and shall be regarded as applying to locations under bounty land warrants, as well as to the ordinary entries or sales, and to all other pre-emption cases or locations where the law has been substantially complied with and the error or informality has arisen from ignorance, accident or mistake, and is satisfactorily explained, and where the rights of no other claimant or pre-emptor will be prejudiced, or where there is no adverse claim." (11 Stat., 22.)

The Homestead Act was passed May 20, 1862.

It required the party wishing to take advantage of its provisions to file an affidavit before the register or receiver, setting forth certain matters, and thereupon permitted him to make an entry of 160 acres of land specified in the affidavit.

No patent could issue until the expiration of five years from the date of such entry, and at the expiration of five years, or at any time within two years thereafter, the party was required to prove by two credible persons that he had resided upon or cultivated the land for the term of five years, "immediately succeeding the time of filing his said affidavit."

The question now presented is this: Is a homestead entry such an entry as is provided for in the act of 1856?

It will be observed that the language used in that act is very broad. It was intended to cover all entries and locations then known to the law. Was it intended to apply to all cases that should thereafter be created by law? I think it was, provided they were similar to those then in existence.

The language is: "Those provisions are hereby declared to be applicable to all cases of suspended entries and locations which have arisen since said acts were passed, or which were omitted to be acted upon under either of said acts, *as well as to all cases of a similar kind which may hereafter occur.*"

If it had been the intention of Congress to limit this remedy to the entries then authorized by law, it would have said, "as well as to all cases which may hereafter occur," instead of, "all cases of a *similar kind* which may hereafter occur."

A homestead entry is a *similar entry* to those before recognized. Congress has seen fit to give 160 acres to the homestead settler who will pay ten dollars and the other necessary expenses, and who will settle upon and cultivate the land for five years. It evidently regarded the settlement and cultivation for that period as an equivalent for the land, and as valuable to the government as a money consideration would be.

Ignorance of the law is, in my opinion, such ignorance as is meant in the act of 1856. In fact, it is the only kind of ignorance that would be likely to result injuriously to a homestead claimant. The other cases of accident and mistake are such as are fairly within the spirit of the act.

The law is a remedial one, and should be liberally construed. These claimants have substantially complied with it, and made lasting and

valuable improvements, and it would be cruel on technical grounds to deprive them of their home and probably their all.

I advise that their cases be submitted to the board mentioned in the act of 1846 for their adjudication, substituting the Secretary of the Interior for the Secretary of the Treasury as provided by law.

Very respectfully,

WALTER H. SMITH, *Assistant Attorney General.*

HON. C. DELANO, *Secretary of the Interior.*

Concurred in by the Secretary, May 19, 1871.

No. 592.

GEO. CAROBEEN.

Carobeen made homestead entry, but did not remove with his family upon it until after six months from the time of his entry.

He then moved upon it, made valuable improvements, and lived there many years. He was prevented from moving his family by the condition of a swamp road that led to his land.

Held—That his was a case of suspended entry, and proper to be submitted to the Board.

That a homestead entry commences when the claimant shows his qualifications, takes the oath and pays the first fee. That the entry may properly be considered as "suspended" when he applies to make final proof, and his entry is found defective in law, and is not passed for patent or rejected.

Decision by the Secretary, Nov. 3, 1871.

No. 593.

ABRAHAM BUCK.

Buck made homestead entry and cultivated and improved the land from date of entry, but did not reside on the land for four and a half years after entry. He was ignorant that residence was necessary. As soon as informed he built a house on the land and has resided on it from that date (more than two years). There is no adverse claim. His improvements are substantial and valuable, and there is no doubt of his good faith.

Held—That the case was a proper one to be sent to the Board.

Decision by the Secretary, Nov. 13, 1872.

No. 594.

MICHAEL EWART.

Ewart made homestead entry September 1, 1865. He was poor, a minister of the Gospel, made valuable improvements, and was himself on the land by day, but at night went to the place where his wife and family resided, some four miles distant, and where his congregation was. He swears that he thought and believed he was complying with the homestead law.

Held—That his entry should be directed to be suspended, and then referred to the Board.

Decision by the Acting Secretary, March 31, 1873.

TITLE XIV.—SURVEYS.

No. 596.

CIRCULAR INSTRUCTIONS

To give effect to the act of Congress approved March 3, 1871, (Part II., No. 36,) directing deposits made for the survey of public lands to go in part payment of the lands thus surveyed.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 6, 1871.

GENTLEMEN:—By an act of Congress approved March 3, 1871, entitled "An act to amend an act entitled 'An act to reduce the expenses of the survey and sale of the public lands in the United States,' approved May 30, 1862, the following became a provision of law:

"SECTION 11. *And be it further enacted*, That in all cases where settlers shall make deposits in accordance with this act, to the credit of the United States, for public surveys, such amounts so deposited shall go in part payment for their lands situated in the townships, the surveying of which is paid for out of said deposits, and effect shall be given to this act by regulations to be prescribed by the Commissioner of the General Land-Office."

In order to carry the foregoing into effect, the following regulations are prescribed for your observance, viz:

When one or more settlers on public lands shall apply to the Surveyor-General of the district within which such lands are situated, for the survey of a particular township, at his or their expense, that officer shall furnish to said applicant or applicants two separate estimates, one being the cost of the subdivisional survey of the surveyable portion of the entire township, and the other to cover the expense of platting the survey as required by the 10th section, act of May 30, 1862, and the resolution explanatory of the same of July 1, 1864. (U. S. Laws, vol. 10, p. 410, and vol. 11, p. 414, respectively.)

Settlers availing themselves of the provisions of the above quoted section shall deposit with a United States designated depository, to the credit of the U. S. Treasurer, on account of surveying the public lands and clerk hire in the Surveyor-General's office, in the district in which their claims are situated, the sums estimated, as aforesaid, as the cost of the field and office work.

The Surveyor General will take precaution to estimate adequate sums, thereby preventing any deficiency in the payment of deputy surveyor, as well as for clerk hire involved in the service.

Where several settlers desire the survey of the same township, the necessary deposits to cover all expenses of the survey and platting may be so subdivided as to be proportionate to the amount of lands within the township claimed by each settler; this, however, is a matter to be regulated by parties applying for such surveys, but all applicants should

be informed that the law makes no provision for the refunding of any excess of the deposit *over the value of the lands taken*; the excess, however, if any, over and above the actual cost of the *survey in the field and office work*, will be refunded as heretofore under the resolution of Congress of July 1, 1864. (U. S. Laws, vol. 11, p. 414.)

No certificates of deposit can be received in payment by the Receiver for more than the cost of the land at government price, and when the certificate is for more than that amount, the Receiver will indorse the amount for which it is received, and will charge the United States with that sum only, and *not* with the sum named on the face of the certificate.

Where the amount of deposit is, however, *less* than the cost of the land, the certificate will of course be received at its face value, and the remainder of cost of land paid for in cash.

Assuming that the *estimated* cost of survey, (both office and field work,) is \$850, which amount the party deposits, and the *actual* cost is \$800; the party will be entitled, under the act of July 1, 1864, to the \$50 thus deposited in excess of the actual cost of the field and office work; but he will not be entitled to the return of the \$600 deposited in excess of the government cost of one hundred and sixty acres at \$1.25 per acre (amounting to \$200).

If, however, there are several applicants, the amounts deposited by each can be equitably arranged among themselves, provided, of course, the aggregate deposits cover the estimated expenses of the survey and incidental clerk hire.

The Surveyor-General shall distinctly state to the applicant that the application for survey and depositing of the money will give no preference right to the land where adverse claims exist, and that all contests relative to lands applied for, whenever they arise, must be investigated, and passed upon by the proper local land-office before *pre-emption entry* can be allowed or the deposit credited to the *depositing settler*, as the benefits conferred by the act of Congress approved March 3, 1871, herein before cited, inure exclusively to pre-emptors under existing laws.

In making his monthly and quarterly returns, the Receiver shall designate the lands in payment for which certificates of deposits were used by settlers under the law, describing separately in his receipts, the amounts of such payments and the balances paid in cash, if any occur, crediting the United States in said returns with the acres and purchase money of the lands embraced by the class of entries alluded to, and debiting the same with the amounts of the respective deposits applied in payment therefor, as shown by the certificates of deposit, which are to be sent up as vouchers with appropriate quarterly accounts.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

TO THE SURVEYORS-GENERAL, REGISTERS AND RECEIVERS.

[Compare carefully with No. 597.]

TITLE XIV.—SURVEYS.

No. 596.

CIRCULAR INSTRUCTIONS

To give effect to the act of Congress approved March 3, 1871, (Part II., No. 36,) directing deposits made for the survey of public lands to go in part payment of the lands thus surveyed.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
May 6, 1871.

GENTLEMEN:—By an act of Congress approved March 3, 1871, entitled "An act to amend an act entitled 'An act to reduce the expenses of the survey and sale of the public lands in the United States,' " approved May 30, 1862, the following became a provision of law:

"SECTION 11. *And be it further enacted*, That in all cases where settlers shall make deposits in accordance with this act, to the credit of the United States, for public surveys, such amounts so deposited shall go in part payment for their lands situated in the townships, the surveying of which is paid for out of said deposits, and effect shall be given to this act by regulations to be prescribed by the Commissioner of the General Land-Office."

In order to carry the foregoing into effect, the following regulations are prescribed for your observance, viz:

When one or more settlers on public lands shall apply to the Surveyor-General of the district within which such lands are situated, for the survey of a particular township, at his or their expense, that officer shall furnish to said applicant or applicants two separate estimates, one being the cost of the subdivisional survey of the surveyable portion of the entire township, and the other to cover the expense of platting the survey as required by the 10th section, act of May 30, 1862, and the resolution explanatory of the same of July 1, 1864. (U. S. Laws, vol. 10, p. 410, and vol. 11, p. 414, respectively.)

Settlers availing themselves of the provisions of the above quoted section shall deposit with a United States designated depository, to the credit of the U. S. Treasurer, on account of surveying the public lands and clerk hire in the Surveyor-General's office, in the district in which their claims are situated, the sums estimated, as aforesaid, as the cost of the field and office work.

The Surveyor General will take precaution to estimate adequate sums, thereby preventing any deficiency in the payment of deputy surveyor, as well as for clerk hire involved in the service

Where several settlers desire the survey of the same township, the necessary deposits to cover all expenses of the survey and platting may be so subdivided as to be proportionate to the amount of lands within the township claimed by each settler; this, however, is a matter to be regulated by parties applying for such surveys, but all applicants should

be informed that the law makes no provision for the refunding of any excess of the deposit *over the value of the lands taken*; the excess, however, if any, over and above the actual cost of the *survey in the field and office work*, will be refunded as heretofore under the resolution of Congress of July 1, 1864. (U. S. Laws, vol. 11, p. 414.)

No certificates of deposit can be received in payment by the Receiver for more than the cost of the land at government price, and when the certificate is for more than that amount, the Receiver will indorse the amount for which it is received, and will charge the United States with that sum only, and *not* with the sum named on the face of the certificate.

Where the amount of deposit is, however, *less* than the cost of the land, the certificate will of course be received at its face value, and the remainder of cost of land paid for in cash.

Assuming that the *estimated* cost of survey, (both office and field work,) is \$850, which amount the party deposits, and the *actual* cost is \$800; the party will be entitled, under the act of July 1, 1864, to the \$50 thus deposited in excess of the actual cost of the field and office work; but he will not be entitled to the return of the \$600 deposited in excess of the government cost of one hundred and sixty acres at \$1.25 per acre (amounting to \$200).

If, however, there are several applicants, the amounts deposited by each can be equitably arranged among themselves, provided, of course, the aggregate deposits cover the estimated expenses of the survey and incidental clerk hire.

The Surveyor-General shall distinctly state to the applicant that the application for survey and depositing of the money will give no preference right to the land where adverse claims exist, and that all contests relative to lands applied for, whenever they arise, must be investigated, and passed upon by the proper local land-office before *pre-emption entry can be allowed* or the deposit credited to the *depositing settler*, as the benefits conferred by the act of Congress approved March 3, 1871, herein before cited, inure exclusively to pre-emptors under existing laws.

In making his monthly and quarterly returns, the Receiver shall designate the lands in payment for which certificates of deposits were used by settlers under the law, describing separately in his receipts, the amounts of such payments and the balances paid in cash, if any occur, crediting the United States in said returns with the acres and purchase money of the lands embraced by the class of entries alluded to, and debiting the same with the amounts of the respective deposits applied in payment therefor, as shown by the certificates of deposit, which are to be sent up as vouchers with appropriate quarterly accounts.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

TO THE SURVEYORS-GENERAL, REGISTERS AND RECEIVERS.

[Compare carefully with No. 597.]

No. 597.

CIRCULAR INSTRUCTIONS

To give effect to the Act of Congress approved March 3, 1871, (Part II., No. 36.) directing deposits made for the survey of public lands to go in part payment of the lands thus surveyed.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

February 25, 1873.

GENTLEMEN:—By an act of Congress approved March 3, 1871, entitled "An act to amend an act entitled 'An act to reduce the expenses of the survey and sale of the public lands in the United States,'" approved May 30, 1862, the following became a provision of law:

"SECTION 11. *And be it further enacted*, That in all cases where settlers shall make deposits in accordance with this act, to the credit of the United States, for public surveys, such amounts so deposited shall go in part payment for their lands situated in the townships, the surveying of which is paid for out of said deposits, and effect shall be given to this act by regulations to be prescribed by the Commissioner of the General Land-Office."

In order to carry the foregoing into effect, the following regulations are prescribed for your observance, viz :

When one or more settlers on public lands shall apply to the Surveyor-General of the district within which such lands are situated, for the survey of a particular township, at his or their expense, that officer shall furnish to said applicant or applicants two separate estimates, one being the cost of the subdivisional survey of the surveyable portion of the entire township, and the other to cover the expense of platting the survey as required by the 10th section, act of May 30, 1862, and the resolution explanatory of the same of July 1, 1864 (U. S. Laws, vol. 12, p. 410, and vol. 13, p. 414, respectively).

Settlers availing themselves of the provisions of the above quoted section shall deposit with a United States designated depository, to the credit of the U. S. Treasurer, on account of surveying the public lands and clerk hire in the Surveyor-General's office, in the district in which their claims are situated, the sums estimated as aforesaid, as the cost of the field and office work.

The Surveyor General will take precaution to estimate adequate sums, thereby preventing any deficiency in the payment of deputy surveyor, as well as for clerk hire involved in the service.

Where several settlers desire the survey of the same township, the necessary deposits to cover all expenses of the survey and platting may be so subdivided as to be proportionate to the amount of lands within the township claimed by each settler; this, however, is a matter to be regulated by parties applying for such surveys; but all applicants should be informed that the law makes no provision for the refunding of any excess of the deposit *over the value of the lands taken*. The excess, however, if any, over and above the actual cost of the *survey in the field and office work*, will be refunded as heretofore, under the resolution of Congress of July 1, 1864 (U. S. Laws, vol. 13, p. 414).

No certificate of deposit can be received in payment by the Receiver for more than the cost of the land at Government price, and when the certificate is for more than that amount the Receiver will indorse the amount for which it is received, and will charge the United States with that sum only, *not as cash*, but in the manner prescribed in the last para-

graph of these instructions, and *not* with the sum named on the face of the certificate.

The Surveyor-General in all cases will be careful to express upon the Register's township plat the amount deposited by each individual, the cost of the survey in the field and office work, and in case of excess of deposit over and above the field and office work, to mention the amount that is to be refunded, and to whom. The Surveyor-General will also furnish this Office immediately with like information.

The Receiver in accepting certificates of deposit will be guided by the data expressed upon the township plat, and particularly in cases where a portion of the sum deposited is to be refunded to the depositor.

Where the amount of deposit is, however, *less* than the cost of the land, the certificate will of course be received at its face value, subject to the deduction therefrom of the sum to be refunded as aforesaid, and the remainder of cost of land paid for in cash.

Assuming that the *estimated* cost of survey (both office and field work) is \$850, which amount the party deposits, and the *actual* cost is \$800; the party will be entitled, under the act of July 1, 1864, to the \$50 thus deposited in excess of the actual cost of the field and office work; but he will not be entitled to the return of the \$600 deposited in excess of the Government cost of one hundred and sixty acres at \$1.25 per acre (amounting to \$200).

If, however, there are several applicants, the amount deposited by each can be equitably arranged among themselves, provided, of course, the aggregate deposits cover the estimated expenses of the survey and incidental clerk hire.

The Surveyor General shall distinctly state to the applicant that the application for survey and depositing of the money will give no preference right to the land where adverse claims exist, and that all contests relative to lands applied for, whenever they arise, must be investigated and passed upon by the proper local land office before *pre-emption entry can be allowed* or the deposit credited to the *depositing settler*, as the benefits conferred by the act of Congress approved March 3, 1871, hereinbefore cited, inure exclusively to pre-emptors under existing laws.

In making his monthly and quarterly returns, the Receiver shall designate the lands in payment for which *certificates of deposits* were used by settlers under the law, describing *separately* in his receipts the amounts of such payments and the balances paid in cash if any occur, crediting the United States in said returns with the acres and purchase money of the lands embraced by the class of entries alluded to, and immediately opposite to such entries debiting the United States with said certificates of deposit, which must accompany quarterly returns as vouchers, at the same time being careful to give the number of the certificate, date, amount, by whom and with whom deposited, and the actual sum for which it was received.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

TO THE SURVEYOR-GENERAL, REGISTERS AND RECEIVERS.

No. 598.

ROMAN A. BACA.

Certificates of deposit for survey are not transferable; such certificates erroneously transferred may be returned to the rightful holder and be used by him.

The General Land-Office furnishes no redress in case of transfers of certificates of deposit for surveys.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, D. C., Sept 10, 1874.

ABRAM G. HOYT, Esq., *Receiver U. S. Land-Office, Santa Fé, N. M.*

SIR:—I am in receipt of your letter of the 29th ultimo, informing me that Roman A. Baca deposited \$140 for the survey of fractional township 13 N., R. 7 west, N. M., and that the certificate received was endorsed by him to Juan Pablo Chavez, upon the strength of which the latter was permitted to make and perfect his pre-emption claim. But as you were advised by this Department that the certificate was not transferable, and that Mr. Chavez would have to pay the money for the land, you desire to know whether the sum deposited by Mr. Baca cannot be refunded.

In reply I would advise you that the amount deposited by R. A. Baca was expended as follows, viz:

Paid Geo. H. Pradt for expense of survey, \$92.03; expenses for office work, \$32.58; amount refunded Mr. Baca, excess of expenses, \$15.39. You will at once see that there is no money to refund. I also find upon examining the records of this Office that Mr. Chavez has paid the full sum for the land as required; had he not done so, the certificate could have been returned to Mr. Baca, and upon his presenting the same to you, would have placed him in the position now occupied by Mr. Chavez.

There is no redress upon the part of this Office, the case as it now stands resting entirely with the two individuals.

Very respectfully,

S. S. BURDETT, *Commissioner.*

No. 599.

CIRCULAR INSTRUCTIONS

For establishing corners in regions remote from timber and destitute of stone.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE

Washington, D. C., July 24, 1873.

The attention of this office has been recently called, by a United States deputy surveyor operating in a region remote from timber and destitute of stone, to the method of establishing corners of the public surveys by mounds of earth and pits, with deposits of charcoal, marked stone, a charred stake, one or the other of which is required by the printed Manual of Surveying Instructions to be placed in the earth at the point of a corner. These mounds, being devoid of description of township, range and section, are of but little use to the settler in describing his claim.

The Department, realizing the defect in the Manual in this particular, and deeming it of importance, has concluded to rectify the omission by

prescribing the following additional requirement in surveying public lands of the character in question :

In addition to the manner of establishing corners of public surveys by mounds of earth with deposits at the point of the corner, deputy surveyors are required to drive in the centre of one of the pits at each section and township corner, sawed or hewed stakes not less than two inches square and two feet in length, said stakes to be marked in the manner prescribed in the Manual for marking corner-posts, and to be driven one foot in the ground. At corners common to four townships or sections the stakes are to be driven in the pit south-east of the mound, and at corners common to two townships or sections they are to be driven in the pit east of the corner. *This requirement does not apply to quarter-section corners.*

These Instructions will apply to and accompany all contracts entered into subsequent to the receipt hereof.

Very respectfully,

WILLIS DRUMMOND, *Commissioner.*

No. 600.

ANDREW M. NEAL.

How to subdivide sections and establish quarter and quarter-quarter corners.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., March 13, 1874.

ANDREW M. NEAL, Esq., *St. James, Cedar county, Nebraska :*

SIR :—In reply to your letter of the 2d instant, enclosing *five dollars*, and requesting information in regard to the subdivision of sections and establishment of corners, I have to say as follows :

Under the provisions of the act of Congress approved February 11, 1805, the course to be pursued in the subdivision of sections is to run straight lines from the established quarter-section corners (U. S. surveys) to the opposite corresponding corners, and the point of intersection of these lines will be the corner common to the several quarter sections.

In the subdivision of fractional sections where no opposite corresponding corners have been or can be fixed, the subdivision lines should be ascertained by running from the established corners due north, south, east, or west lines, as the case may be, to the water course, Indian boundary line, or other external boundary line of such fractional sections.

The law presupposes the section lines surveyed and marked in the field by the U. S. deputy surveyor to be due north and south or east and west lines, but in actual experience this is not always the case. Hence, in order to carry out the spirit of the law, it will be necessary, in running subdivisional lines through fractional sections, to adopt mean courses where the section lines are not due lines, or to run the subdivisional line parallel to the section line when there is no opposite section line.

In the subdivision of quarter sections the quarter-quarter posts are to be placed at points equidistant on straight lines between the section and quarter-section corners, and between the quarter corners and the common centre of the section, *except* on the last half-mile of the lines

closing on the north and west boundaries of a township, where they are to be placed at a distance of twenty chains, original measurement, to the north or west of the quarter-section corners.

When there is a *double set* of section corners on a range line, the quarter corners for the sections east of the line are not established by the U. S. surveyor, but in subdividing such sections the quarter corners on the west side should be so placed as to suit the calculations of the areas of the northwest and southwest quarters, as expressed upon the official plat, adopting a proportional measurement when the present measurement of the west boundary of the section differs from the distance given in the original field notes.

The money received with your letter is herewith returned.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 601.

ADAM DILLER.

A county surveyor has no authority of law for removing an original corner established by a deputy United States surveyor, but where a corner-post is found lying on the ground, it should be restored to its true position as shown by the original field-notes.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 20, 1874.

ADAM DILLER, Esq., *Clay Centre, Clay county, Kansas*.

SIR:—In reply to your inquiry of the 11th instant, I have to say that there is no authority of law for the removing, by a county surveyor, of a corner established by a deputy United States surveyor where such corner can in any way be identified as an original established corner.

In cases where the corner-post was found lying on the ground several chains from its true position, with no evidence that the corner was ever established at the point where the post was found, this Office has held that the corner should be restored to its true position, as indicated by the original field-notes.

In this case the county surveyor, it is presumed, acted under local authority, and as the United States has disposed of its interest in this land, if the action of the county surveyor is illegal or unjust, you will have to seek for redress at the hands of the State courts.

In addressing this Office in relation to a corner of the public surveys, you should state the particular section, township, and range-line, in order that by a reference to the official plat and field-notes on file here the inquiry may be satisfactorily answered.

Very respectfully,

W. W. CURTIS, *Acting Commissioner*.

No. 602.

J. WOODWORTH.

Rule for location of quarter corners on north and west boundaries of section 6, where the present measurement differs from the distance given in the field-notes of the original survey.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Nov 9, 1874.

J. WOODWORTH, Esq., *Atchison, Kansas.*

SIR:—In reply to your letter of the 2d inst, relative to the proper location of the quarter corner on the north boundary of section 6, T. 6 S., R. 20 E., Kansas, I have to say that as the present measurement differs from the distance according to the Government field-notes, a proportional measurement must be adopted.

According to the field-notes, the length of the north line of the section is 78.26 chains, while by your chaining it is 73.77 chains; the proportion will therefore be as follows:

As 78.26 : 73.77 :: 40.00 : 37.71 chains, the distance west of the N. E. corner of section 6, at which, by your chaining, the corner in question should be located.

Very respectfully,

S. S. BURDETT, *Commissioner.*

[The above opinion was reasserted in a letter dated Dec. 18, 1874, to Senator Ingalls, of Kansas, in view of the act of Feb. 11, 1805, (2 Stats., p. 313,) which provides that the length of lines as returned by the Surveyor-General "shall be held and considered as the true length thereof."—Ed.]

No. 603.

N. B. BRADLEY.

1. Rivers are deemed navigable waters when they are susceptible of being used as highways of commerce between the States.
2. The right of grantee of land bordering on navigable rivers stops with the bank of the stream, though he may construct landings and wharves.
3. New States have the same rights, sovereignty and jurisdiction over navigable streams as the original States.
4. The State has sovereignty over ground that was part of the bed of a navigable stream on her admission, and the public land laws are not applicable to it subsequently.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 20, 1874.

HON. N. B. BRADLEY, *House of Representatives:*

SIR:—I have the honor to return herewith the papers filed by you on the 7th instant, respecting what is known as the "Middle Ground," in Saginaw river, Michigan, together with a copy of a letter to this office, dated 6th ultimo, from P. C. Andre, Esq., of Saginaw.

This middle ground appears to have been, at the date of the public surveys, a part of the bed of the river, covered by its waters.

No public survey of it was attempted, and no island is reported in the stream at this point.

In March, 1856, a survey was made upon the ice by the county surveyor, who certifies that no survey could be accomplished in any other manner, the grounds being so constantly under water as to render it impracticable to make the attempt.

This survey was filed in this office, but was not considered as entitled

to approval as a survey of public lands, and was not so approved. Congress, however, on the 15th July, 1870, evidently without an examination of the question involved, passed joint resolution No. 140, directing the issue of patent to Stephen N. Carston, for a portion of said grounds, described by metes and bounds, upon payment by him of the sum of \$100.

The Commissioner, my predecessor in office, for the purpose of carrying the law into effect, on the 10th August, 1870, endorsed on the said plat of survey his qualified approval as *ex officio* surveyor-general of Michigan, and subsequently issued the patent accordingly.

Understanding that you wish my opinion upon the question of the power of Congress to dispose of this ground as public land, I have examined the facts as above recited, and would state that I do not regard it as in any sense public land, the property of the United States, but consider it properly within the jurisdiction of the State of Michigan and subject to her laws.

The rights of the owners of the shore having been also called to my attention, I will give you a few authorities, decisions of the Federal courts, which seem to have direct application to this case, and will indicate the United States law upon both points.

Rivers are deemed navigable waters of the United States when they are used or are susceptible of being used in their ordinary condition as highways for commerce between the States. (*The Daniel Ball*, 10 Wall., 557; the *Montello*, 11 Wall., 411.)

Under the acts of Congress relating to the survey and sale of public lands bordering on rivers, the right of a grantee of lands bordering on a navigable river stops at the stream, and does not extend to the *medium filum*. But such riparian proprietors have the same rights to construct suitable landings and wharves for the convenience of commerce and navigation as riparian owners on navigable waters affected by the ebb and flow of the tide. (*Railroad Co. v. Schurmeir*, 7 Wall., 272.)

The owner of land bounded by a navigable river (whether his title extended to the middle of the stream or not) has a right of free access thereto, and of erecting a landing, wharf, or pier for his own use or that of the public.

These rights are to be enjoyed subject to such general rules as the legislature may prescribe for the protection of the public rights; they cannot be taken for public use except due compensation be made. (*Yates v. Milwaukee*, 10 Wall., 497.)

At the Revolution, the people of each State in their sovereign character acquired the absolute right to all navigable waters and the soil under them. (*Martin v. Waddell*, 16 Pet., 307. *Russell v. Jersey Co.*, 15 H., 426.)

The shores of navigable rivers and the soil under them were not granted by the Constitution to the United States, but were reserved to the States respectively, and new States have the same rights, sovereignty, and jurisdiction over this subject as the original ones. (*Pollard v. Hagen*, 3 H., 212. *Pollard v. Kibble*, 9 H., 471. *Hallett v. Beebe*, 13 H., 25. *Withers v. Buckley*, 20 H., 84.)

The foregoing will be sufficient to show that if this ground was of the bed of the stream on the admission of the State, she has sovereignty over it, and the laws for the disposal of the public domain can have no application to it subsequently.

Very respectfully, WILLIS DRUMMOND, *Commissioner*.

No. 604.

CIRCULAR INSTRUCTIONS.

For surveying beds of meandered lakes, etc., in districts where the office of Surveyor General has been discontinued.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 13, 1874.

As inquiries arise in regard to the survey of the beds of meandered lakes or other similar bodies of water in districts where the office of Surveyor-General has been discontinued, the following is communicated as defining the conditions under which such lake beds are regarded as surveyable, and as giving the proper mode of proceeding to have the same surveyed and to obtain title thereto:

The beds of lakes, (not navigable,) sloughs and ponds over which the lines of the public surveys were not extended at the date of the original survey, but which from the presence of water at the date of such survey were meandered, are held to be the property of the United States; and whenever, by evaporation or the operation of any other cause, natural or artificial, the waters of such lake, slough, or pond have so *permanently* receded or dried up as to leave within the unsurveyed area dry land fit, in ordinary seasons, for agricultural purposes, such dry land is subject to survey and sale under the general laws regulating the disposal of the public domain.

Such surveys will be ordered and, upon approval, disposition proceeded with in the following cases:

1st. Where the waters have so far permanently receded or disappeared as to permit, during the ordinary surveying season, (not on the ice,) the actual extension of the lines of survey, and the establishment and marking of corners in the manner required by law, over the whole area of the bed of such former lake.

2d. Where the waters have not generally disappeared, but where they have so far permanently receded as to leave a margin of dry land fit for cultivation between the original meandered lines and the remaining waters, of sufficient area to admit of the survey and of the establishment of at least three of the corners of a quarter-section.

3d. The Commissioner of the General Land-Office will consider the question of ordering a survey of margins not admitting the laying off of one hundred and sixty acres, but not less than forty acres.

Parties desiring the survey of such lands may make application in writing to the Commissioner of the General Land-Office therefor, stating the approximate area, and the situation of the tract with reference to the section, township and range of the public surveys, the same to be illustrated by a diagram; the fact that the waters have disappeared in the manner or to the extent as specified in one of the three several above-specified cases—such statement to be accompanied with the affidavit of at least two credible and disinterested witnesses as to the disappearance of the waters, the probable quantity of land capable of being surveyed in the whole area lying between the original meandered line and the then margin of the waters, and showing what proportion of such area is fit for agricultural purposes. To insure prompt attention and decision by this Office, both the statement and affidavits required must be *full and specific*.

If, upon examination of such statement, diagram, and proof, it is

found that such survey may be properly allowed, the parties applying will be so notified, and upon their designating to this Office the name and residence of some competent and reliable surveyor, together with a statement from him in writing of the amount for which he is willing to execute the field-work of the survey, and a certificate of some United States depository that the amount specified has been deposited to the credit of the United States "on account of individual depositors," the Commissioner will then issue the necessary instructions to the surveyor to enable him to execute the field-work of survey in accordance with the public land system.

To correct what seems to be a very general misapprehension as to the manner in which persons may proceed to perfect title who have made actual settlement on lands of the character herein designated, and who claim or propose to claim under the pre-emption laws of the United States, it is remarked that in no event and at no stage of the proceedings can their declaratory statements be received or filed in this Office. Such declaratory statements must be filed in the local land-office, and cannot be there received until after such survey has been made and the approved plat thereof filed in the local office.

It is proper to further state that the fact of having borne the expense of survey will give no priority of claim or right, under existing laws, to purchase the land, or in any manner affect the vested interest of any party thereto, should such exist, as the land, when surveyed, will be subject to disposal according to the laws of Congress and the regulations of this Office relative to the disposal of lands embraced in fragmentary surveys.

In case the lake bed is small and is so situated that no township, section, or quarter section corners will need to be established by reason of such lake being situated within a given section or sections fully surveyed, no deposit will be required; and upon proof being furnished this Office as above of the disappearance of the water, the premises will be platted, and the land can then be disposed of under existing laws.

Respectfully, S. S. BURDETT, *Commissioner*.

No. 605.

CIRCULAR INSTRUCTIONS

For surveying islands in lakes or rivers in districts where the office of Surveyor General has been discontinued.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

December 1, 1874.

As inquiries arise in regard to the survey of islands in lakes or rivers in districts where the office of Surveyor General has been discontinued, the following is communicated as the proper mode of proceeding to have the same surveyed and obtain title:

1st. Islands may be surveyed at the expense of the party applying, under the provisions of the act of Congress approved 30th May, 1862, "to reduce the expenses of the survey and sale of the public lands of the United States," U. S. Statutes, vol. 12, p. 410, in the 10th section of which it is declared: "That when the settlers in any township or townships, not mineral or reserved by Government, shall desire a survey made of the same under the authority of the Surveyor-General of

the United States, and shall file an application therefor in writing, and deposit in a proper United States depository, to the credit of the United States, a sum sufficient to pay for such survey, together with all the expenses incident thereto, without cost or claim for indemnity on the United States, it shall and may be lawful for said Surveyor-General, under such instructions as may be given him by the Commissioner of the General Land-Office, and in accordance with existing laws and instructions, to survey such township or townships, and make return thereof to the general and proper local land-office: *Provided*, The townships so proposed to be surveyed are within the range of the regular progress of the public surveys embraced by existing standard lines or bases for the township and subdivisional surveys."

Application for the survey should be addressed to the Commissioner of the General Land-Office, and be accompanied by the affidavits of at least two reliable and disinterested parties, showing that thirty days notice had been given the coterminous proprietors of the intention to apply for the survey of such island, stating the area, character, and situation of the island in the lake or river, with reference to the description of the section, township, and range of the public surveys, the same to be illustrated by a diagram. The width and depth of the channel, on either side between the island and the main shore, should be shown, and it should be stated whether the configuration of either shore of the mainland has materially changed since the original survey of the water front on the mainland.

2d. The applicant shall designate some competent and reliable surveyor, and send to this office a statement from him, in writing, of the amount for which he is willing to execute the field work of the survey.

If, upon examination of the evidence filed in support of the application, the island is deemed a proper subject of survey, the applicant will be notified of the amount necessary to be deposited with a United States depository to the credit of the Treasurer of the United States, on account of the "fund created by individual deposits for surveys" to defray the expense of the field work of the survey.

Upon such deposits being made the United States depository is required to issue certificates of deposit in triplicate, one to be transmitted to this Office, upon the receipt of which, all the other requirements having been complied with, the Commissioner will issue the necessary instructions to the surveyor to enable him to execute the field work of survey in accordance with the public land system.

3d. It is proper to state that the fact of having borne the expense of survey will give no priority of claim or right, under existing laws, to purchase the land, or in any manner affect the vested interest of any party thereto, should such exist, as the island, when surveyed, will be subject to disposal according to the laws of Congress and the regulations of this office relative to the disposal of lands embraced in fragmentary surveys.

Respectfully,

S. S. BURDETT, *Commissioner*.

TITLE XV.—DUTIES OF REGISTERS AND RECEIVERS.

I. MONTHLY AND QUARTERLY RETURNS.

No 607.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

Washington, July 1, 1871.

GENTLEMEN: With a view to uniformity in the manner of making up the monthly and quarterly returns required from the United States district land officers, it is expected that in future, when preparing the returns that may become due from your respective offices, you will be governed by the following rules:

1. In filling up the register's certificates of purchase, and receiver's receipts for ordinary cash entries, homestead affidavits, and the final certificates, the Christian name of the purchaser, or homestead applicant, as the case may be, is to be written out in full in every instance, special care being taken with respect to the correct orthography of the name, as well as in the discrimination between male and female names where nearly resembling each other in sound and spelling; the name of the county and State in which the party may reside should invariably be inserted in the respective documents; also his or her post-office address. When there may be two or more purchasers of the same surname in a certificate of purchase, the surname is to be repeated in each case, thus: John Brown, James Brown, and William Brown; not John, James, and William Brown; and to avoid ambiguity in the description of lands, where two or more subdivisions of the same quarter-section are embraced in one entry, they are to be described in the certificate, receipt, &c., thus: North-east $\frac{1}{4}$ of the north-east $\frac{1}{4}$ and south-west $\frac{1}{4}$ of the north-east $\frac{1}{4}$ of section, west $\frac{1}{2}$ of north-east $\frac{1}{4}$ and south-east $\frac{1}{4}$ of the north-east $\frac{1}{4}$ of section, and not north-east and south-west quarters of north-east $\frac{1}{4}$ of section, or west $\frac{1}{2}$ and south-east $\frac{1}{4}$ of north-east $\frac{1}{4}$ of section. The register is also to observe the greatest particularity in regard to the manner in which the application of a purchaser or homestead settler is made out. The most careful regard is to be had in the correct spelling of the name, as well as to the designation of the tract, the entire description of which is to be written out in full, and *not* to be expressed in *figures*; and where the tracts are bounded by a river they are to be designated with reference to the bank of the river upon which they may be situated; thus, on the right or left bank of the river in descending, and *not* north, south, east or west of the same; this rule for describing the land being equally applicable in the case of the certificate of purchase, receiver's receipt, &c. In the case of cash entries, the applications are to be retained upon the files of the register's office, while in homestead cases they are to be sent up to this office, accompanied by the settler's affidavit and the receiver's receipt.

2. In every instance the certificate of purchase, the receiver's cash receipt, the homestead application, affidavit, and receipt are to be neatly trimmed and folded over a tin folder, corresponding in size with the pattern herewith inclosed, the edges are to be turned under on each side, and the number of the entry, name of land district and State, together with the character of the entry, are to be plainly written on the back of each case. In the case of a cash entry the register's certificate of purchase is to be folded on the outside of the receiver's receipt, and in the event of there being an assignment or pre-emption proof connected with the case, they are to be, if practicable, placed on the inside of the receipt. But if the proof be too voluminous to permit of it being filed in this manner, it is then to be folded as nearly as possible to the size of the other papers, and bound to them with tape or a paper band. The proof is to have indorsed upon it the number of the entry to which it pertains, and the name of the pre-emptor. The number of the declaration, and description of the tract for which the same is filed, is to be in every instance indorsed in red ink upon the back of the appropriate certificate of purchase. In homestead cases the application, properly indorsed with the number of the entry and name of the settler, is to be folded upon the outside of the affidavit and receipt. The homestead certificate, to be issued upon the filing of the final proof, should be folded a trifle larger than the papers alluded to, so as to permit of their being placed within it, upon the case being finally disposed of. Agricultural college scrip is to be folded with the *application* on the outside, with the register's and receiver's number and the number of the scrip indorsed upon it; the register's and receiver's number in *red ink*.

3. The practice of using half or fractional numbers for the receiver's receipt is to be *discontinued*. In future the receipts issued for payments on account of excesses in warrant and homestead cases, additional payments on graduated entries, etc., and also for payments on account of double minimum lands located with military warrants and agricultural college scrip, are to be numbered consecutively, with full numbers, in accordance with the regular cash series, and are to have indorsed upon them in *red ink* the number and description of the case with which they may be respectively connected. No certificates of purchase are required in these cases, nor is it necessary to send up separate or special abstracts in cases of payment on account of homestead excesses, such payments being reported in the regular cash returns.

4. The homestead registers of entries and receipts are to exhibit the true areas embraced by the respective entries; the several columns of said returns are to be properly added up and the footings stated; and from the footing of the column appropriated to the area of the lands entered there is to be deducted the aggregate area of the excesses over the 160 acres, &c., specified in the homestead law, the remainder, after making said deduction, being the proper area to be inserted in the fee statement. In the case of locations with college scrip, where the area is less than that shown by the face of the scrip, the former is to be inserted in the fee statement under the heading "*Quantity actually located,*" &c., but you are *not* in any case to insert under that heading an area greater than that embraced by the face of the scrip, inasmuch as the excess will have been reported in the regular cash returns. The same rule is equally applicable in the case of locations made with military bounty-land warrants.

In the case of additional payments on account of graduated entries, payments on homestead entries commuted with cash, and also on account of double minimum, or \$2.50 per acre, lands located with military bounty-land warrants or agricultural college scrip, the area of the tracts embraced thereby is not to appear in your cash returns, for the reason that in the former cases the area will have been already accounted for in the returns in which the original entries were reported, and in the latter will be embraced in the warrant and scrip abstracts for the month in which the locations are made.

5. Where payment for land is made with Revolutionary bounty-land scrip, by law receivable in the form of money in satisfaction of lands subject to sale at private entry, and also in payment for unoffered lands which may be embraced by pre-emption entries, a regular cash certificate of purchase and receiver's receipt are to be issued, the same to be numbered in accordance with the regular current cash series; the receiver indorsing upon his receipt the amount paid in scrip and stating the number of the latter. The United States is to be credited in the cash column of the monthly and quarterly returns with the entire amount of purchase money of the land described in the certificate and receipt, the amount received in scrip to be specified in the column of the returns appropriated to that purpose, and the Government is to be debited in the receiver's monthly and quarterly accounts with the amount of scrip actually applied in payment or part payment of such land, the scrip to be sent up, as vouchers, with the monthly accounts.

Under existing regulations, assignments of the scrip, to be attested by two witnesses, are to be written out in full, with the name and residence of the assignee properly inserted in the body of the assignment; and when it is surrendered in payment for lands it is to be properly relinquished to the United States, the relinquishment in like manner to be attested by two witnesses. Where practicable, both the assignments and relinquishment are to be written out upon the back of the scrip. With respect to the form for the relinquishment, and instructions in regard to the manner of operating with this character of scrip, you are referred to the circular of 16 November, 1830, part 2, laws, instructions, and opinions, p. 436, No. 370.

6. At the end of each month, whether any business may have been done during the same or not, you are to send up to *this Office* a monthly account current and fee statement. If there shall have been no business transacted during the month, that fact is to be stated upon the face of the account, in which the United States is to be credited with any balance that may have been standing against the receiver at the termination of the month immediately preceding. In the fee statement, the fact of there having been no business transacted is to be noted, by inserting under its several headings the words "no business."

7. Previous to transmitting your monthly abstracts, transcripts, of the monthly registry of receipts, certificates of purchase, receiver's receipts, &c., the register and receiver are required to carefully examine and compare the respective returns, the one with the other, and each with the applications, plats, and tract books, with a view to detecting any errors or discrepancies that may exist therein. (See 33d clause of circular of 25th May, 1831, the circulars of 29th September, 1831, January 5, 1849, &c.) The fact of such examination and comparison having been made, is to be certified to by the register and receiver, or

one of them, upon the monthly abstract of sales, &c. The respective abstracts should be folded separately, and are to have indorsed upon them the name of the land-office, the character of the entries embraced by them, and the name of the month and year in which such entries are made.

8. *Receiver's accounts.*—In addition to the monthly abstracts or registers of cash and homestead receipts, the receiver is required to render to this office, at the end of every month, a monthly account current, in which the United States is to be credited with the aggregate amount received during the month, from the sales of the public lands—specifying the area thus disposed of; the amount received as additional payments on graduated entries and on homestead entries commuted with cash; the amount received in cash on account of double minimum, or \$2.50 per acre, land located with military bounty-land warrants or with agricultural college scrip; the amount received as register's and receiver's fees for filing pre-emption declarations for locating military warrants and agricultural college scrip, together with any other fees they may be legally authorized to collect; also, the \$10 and \$5 payments on homestead entries, commissions on the value of the lands embraced thereby, and also the commissions payable at the time of filing the final homestead proof. In the same account the United States is to be debited with such sums as the receiver may deposit during the month to the credit of the United States Treasurer, the amount which may be paid out on Treasury drafts, and the amount received in Revolutionary scrip, the numbers of which must be specified. By a regulation of the Department the register is required, at the end of every month, to examine the public moneys in the possession of the receiver, and report the result of such examination, by indorsing upon the monthly account a certificate, in the following form, viz:

"This is to certify that I have, on this date, examined the public moneys in the hands of the receiver, and find that the same amount to the sum of \$—, and consist of the following funds, viz: (Here describe the character of the funds.) \$—.

"Witness my hand this — day of —, 1871.

"A. B., Register."

[This monthly account is not to be rendered in duplicate, and, when sent up, is to be forwarded directly to this Office, and none other.]

9. *Quarterly accounts.*—At the termination of each quarter of the calendar year, the receiver is to forward to *this Office* a quarterly account current, in which he is to credit the United States, in detail, with the amount received for each particular entry—giving the area—of lands actually sold during the quarter; each additional payment made on account of graduation entries, and payments to complete the purchase money of lands previously sold; the amount received in payment of homesteads commuted with cash; the sums of cash received on account of double minimum lands located with military bounty land warrants, and agricultural college scrip; and, in aggregate, amounts received as fees for locating military warrants and agricultural college scrip; pre-emption fees, fees for filing pre-emption declarations and adjudicating claims, together with any other fees legally accruing to the register and receiver; the \$10 and \$5 fees on homesteads with the commissions on the value of the land embraced thereby, and the commissions payable on filing the final proof, debiting the United States in

said account with such deposits as may be made during the quarter, payments made on Treasury drafts, and the amount of revolutionary scrip applied in payment of lands entered during the quarter, specifying in the account the numbers of the pieces of scrip surrendered. Any balance due to the United States at the end of the quarter is to appear upon the debit side of the last sheet of the account, and is to be credited in the account for the quarter next succeeding.

The columns in this account, respectively, appropriated to the area and purchase-money of lands sold, are each to be carefully added up, and have the footings stated on each page—the last page of the account to show, by a recapitulation of the sales, the aggregate area and amount of purchase-money of land sold at \$1.25 per acre, and above, provided there may be any disposed of at prices greater than the ordinary minimum rate per acre. The receiver is also to send up, in addition to the account alluded to, a condensed quarterly account, which differs from the former only in the fact that the lands disposed of and purchase-money received therefor are to be reported in gross instead of detail. The balances, as shown by these accounts, will necessarily agree, and, as a matter of course, must correspond with that exhibited by the monthly account current for the last month in the quarter, provided the balances accruing at the termination of the months preceding shall have been correctly brought forward.

Disbursing account.—The quarterly account required from the receiver, acting as disbursing agent, is to be kept entirely separate and distinct from his other accounts. In this account he is to credit the United States with the amount of such Treasury drafts as may be issued in his favor to cover the legally authorized expenses of the district land-office, debiting the United States with the expenses of depositing, the previously authorized contingent expenses, and with the payments to the register and receiver on account of their salaries, commissions, and fees. All payments, except those to the receiver for salary, &c., are to be supported by proper vouchers. The allowance for mileage in making deposits is at the rate of ten cents per mile for the distance actually traveled, by the nearest route usually traveled in going to, and returning from, the place of deposit. In every instance where a charge is made for mileage, the receiver must furnish his own affidavit to the fact of his having traveled in person, or by an agent *specially appointed for the purpose*, to make the deposit, and that such deposit could not be made through the agency of the express at a less cost to the Government. This affidavit is to be accompanied by a certificate from the register, specifying the actual distance, by the route traveled, between the land-office and place of deposit.

10. By act of March, 1849, the receiver is required to pay immediately into the Treasury, "without abatement or reduction," all moneys coming into his possession from the disposal of the public lands. Hence he cannot legally appropriate or pay over any portion of such on account of salaries, commissions, &c., until the amount necessary for that purpose shall have been placed in his hands as disbursing agent, by a Treasury draft. A draft in his favor is requested, upon the receipt at *this Office*, of the quarterly estimate of expenses, prescribed by the circular of 13th June, 1849.

11. By a Treasury regulation the receiver is required to pay, out of such public moneys as he may at the time have in his possession, the drafts that may be issued in his favor as disbursing agent, notwith-

standing the draft may be drawn as payable by some United States depository. Upon paying such draft he is to indorse upon it the fact of its having been paid by himself *as receiver*, and immediately return it to the Treasurer of the United States; debiting the amount thus paid in his receiver's monthly and quarterly accounts.

12. It is expected that, from day to day, you will keep the preparation of your respective returns in such a state of forwardness as to enable you to complete and transmit them to this Office within three days from the termination of the month or quarter for which they may be due. Forms for the preparation of the several returns required, properly trimmed, folded, and indorsed, will be forwarded to you. By carefully conforming thereto, and strictly observing the rules suggested in the foregoing instructions, you will obviate the necessity for an extensive special correspondence, and thereby greatly facilitate the business operations of this Office.

I am, respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER AT ———

No. 608.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, September 15, 1872.

GENTLEMEN:—In the preparation of the returns that may become due from your respective offices, you will, in addition to the instructions contained in our circular dated July 1, 1871, be governed by the following rules:

1st. Pre-emption declarations filed under the Act of September 4, 1841, should be kept on the files of the Register's office. Homestead declarations filed under the Act of June 8, 1872, should also be retained on said files, to be sent to this office with other necessary papers when the entry is completed.

2d. Parties who may have entered as homesteads, lands along the line of a railroad which, at the date of entry, were regarded as double minimum, but which, upon being subsequently restored to market, proved to be ordinary minimum lands, *cannot*, except in cases coming under the provisions of the second section of the Act of June 8, 1872, commonly known as the soldiers' homestead law, legally enter an adjoining farm thereto, inasmuch as the law accords but *one* homestead privilege, which will necessarily have been *exhausted* in the first or original entry.

3d. Parties who desire to enter additional land, as provided in the second section of the soldiers' and sailors' homestead act, approved June 8, 1872, *must* pay the legal fees and commissions, as required by the original homestead act of May 20, 1862.

4th. Omit from your college scrip and military warrant abstracts the area embraced by *commuted homesteads*, and *locations authorized to be made without fees*, for the reason that the areas thereof will have been already accounted for in the returns in which the original entries were reported. The several columns of the abstracts are to be properly

added up and the *footings stated*, and from the footing of the column appropriated to the area of the lands located, there is to be deducted the *aggregate* area of the *excesses* over the quantity exhibited upon the face of the warrants or scrip, the *remainder*, after making said deduction, being the *proper area* to insert in your fee statement under the heading "Quantity actually located."

5th. The area of homestead entries that are by permission of this office entered without fees and commissions *must be omitted* from your homestead abstracts.

6th. Where cash is substituted for a warrant or scrip location that has been adjudged invalid, the area of such entries *must not* appear in your cash abstracts.

7th. The fees to be collected upon locations made with military warrants and college scrip, are to be *computed* upon the area expressed upon the *face* thereof, *regardless* of any *deficit* there may be in the tract or tracts upon which the same is located (see circular of November 21, 1856, which supersedes our circular of September 14, 1852, also circular from this office dated March 10, 1869.)

8th. In preparing your monthly abstracts you will select the number of sheets required and place them together in *book form* in order that that they may be properly bound, and in addition to the instructions contained in the seventh clause of our circular dated July 1, 1871, indorse on said abstracts the lowest and highest numbers that appear on the same.

9th. In pre-emption cases you will be particular to see that the *number* and *date* of the *declaration* is *indorsed*, in *red ink*, on the back of the appropriate *certificate* or *application*, as the case may be. You will also observe this rule in the commutation of homestead entries.

10th. The number of the excess receipt, if any, *must be* indorsed, in *red ink*, on the back of the case with which it may be connected. *All* excess receipts should be sent up with your *cash returns*. Your *special attention* is directed to the third clause of our circular dated July 1, 1871. (No. 607)

11th. In view of the inconvenience attendant upon the rapid accumulation of letters upon the files of this office, it becomes necessary to modify the requirements of our circular of the 20th July, 1853, *so far as it relates to the manner of transmitting your respective monthly returns*. Hence, in future, instead of sending a special letter with each description of returns, you will advise us by a *single letter*, stating the *number of packages transmitted* and the *contents of each package*. Be particular to see that they are all forwarded in the *same mail*, and that *no portion* of them are sent up until the *close of the month*.

12th. The Receiver's regular quarterly returns, also any *Indian accounts* that may be due from his office, should *all* be inclosed in one package and sent up by *special letter*. For further instructions in regard thereto, he will be governed by *rule six* of our circular of July 1, 1871, which is *applicable to quarterly as well as monthly accounts*.

Be pleased to acknowledge the receipt of this circular.

Very respectfully, WILLIS DRUMMOND, *Commissioner*.
REGISTER AND RECEIVER AT ———

No. 609.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND-OFFICE,
Washington, D. C., July 6, 1874.

GENTLEMEN:—The monthly returns received at this Office from the several District Land Offices are found, on examination, to present cases of discrepancies and other errors of various kinds, so numerous and so glaring as to show that the instructions to Registers and Receivers heretofore prescribed by this Office, enjoining upon them the careful examination and comparison of the respective returns, the one with the other, and each with the applications, plats and tract-books, with a view to detecting any errors that may exist therein, before transmitting them to this Office, are not faithfully complied with; but that, while certificates are attached to the several abstracts by the Registers and Receivers setting forth that they have made such examinations and comparisons, and that the returns are correct, such certificates must often be regarded as mere form, and not as indicating a substantial and *bona fide* compliance with the instructions calling therefor. The consequence is, that much labor is thrown upon this Office not properly incident to its business, in correcting discrepancies and other errors found in the returns from the District Offices, and leading also to great loss and inconvenience to the individuals concerned.

It is the object of this to call attention to instructions heretofore given on the subject—see the 7th section of the Circular of July 1, 1871—and to the importance of your complying therewith, not merely as a form, but in good faith, so as to give them the effect intended. In so doing, I would also remind you that the tract-books in your office must be kept posted up from day to day, so that a comparison of your monthly returns with them may have the intended effect of enabling you to detect errors which may exist in the former. You will, therefore, in certifying your monthly abstracts, as required, add to your certificate that the tract-books in your office with which they are compared are fully posted up to date, taking care to see that such is the fact.

A faithful compliance with the requirements alluded to is regarded as of the first importance for the proper transaction of the public business, and, hereafter, should the character of the returns received be such as to show that any officer has failed to discharge his duty in this respect, it will be considered a sufficient reason for reporting him to the head of the Department for removal from office.

Very respectfully, your obedient servant,

S. S. BURDETT, *Commissioner*.

REGISTER AND RECEIVER.

II. DEPOSITS OF PUBLIC MONEYS.

No. 610.

REGULATIONS OF THE TREASURY DEPARTMENT.

TREASURY DEPARTMENT,
February 10, 1871.

To Collectors and Surveyors of Customs, Collectors of Internal Revenue, Receivers of Public Moneys for Lands, Marshals, Clerks of Courts, and all other Officers or Agents of the United States engaged in collecting, depositing, or transmitting public moneys.

The following regulations, based upon specific provisions of law, for

the violation of which penalties of a severe character are provided, are hereby prescribed, and a strict compliance therewith is enjoined. Should any modification of these regulations be advisable in special instances, the necessary instructions will be given by letter from the Secretary of the Treasury.

COLLECTIONS.

Collectors and surveyors of customs, collectors of internal revenue, and receivers of public moneys, living in the same city or town with an assistant treasurer or designated depositary, must deposit their receipts at the close of each day. Officers at such a distance from a depositary that daily deposits are impracticable must forward their receipts as often as they amount to one thousand dollars, and at least once in each month, without regard to the amount accumulated.

All collections must be deposited to the credit of the Treasurer of the United States, except moneys paid by parties to collectors of internal revenue, in lieu of fines, penalties, and forfeitures, or upon compromises, which must be deposited to the credit of the Secretary, as heretofore.

Receipts of coin must not in any case be deposited in a National Bank Depositary.

District attorneys, marshals, and clerks of courts, who receive public moneys accruing to the United States from fines, penalties, and forfeitures, fees, costs, forfeiture of recognizances, debts due the United States, interest on such debts, sales of public property, or from any other sources, will deposit the same in accordance with the foregoing paragraphs, except moneys accruing from customs and internal revenue cases, which should be paid to the collector or surveyor of customs or collector of internal revenue of the district in which the case arose.

The Department encourages the practice of a deputy collector or agent depositing directly with the depositary, in the name of his principal, believing that greater economy and dispatch will thereby be attained. In such cases, the depositor will take certificates of deposit in the name of the Collector or other officer whose agent he is, or for whom he is acting, and dispose of them as hereinafter provided.

DISBURSING FUNDS.

All moneys advanced from the Treasury to, or coming into the hands of, any officer or agent of the government for disbursement, must be deposited to his official credit, as such disbursing officer or agent, and drawn upon only in his official capacity.

Deposits of such moneys may be made with the treasurer, an assistant treasurer, or any designated depositary of the United States, if specially authorized by the Secretary of the Treasury for that purpose under the Act of June 14, 1866, and not otherwise. In case no such special authority has been given to a convenient depositary, application should be made to the Secretary of the Treasury for such authorization.

CERTIFICATES OF DEPOSIT.

All *original* certificates of deposits issued for public moneys should be forwarded immediately by the depositors to the Secretary of the Treasury, except—

1. Those issued to judicial officers, which should be sent to the Solicitor of the Treasury, with an explanation, in detail, of the nature of the deposits.

2. Those issued for deposits for use of the Post Office Department, which should be sent to the Third Assistant Postmaster General.

RECEIPTS.

Receipts given to district attorneys, marshals, or clerks, for moneys paid by them to collectors and surveyors of customs, should be sent to the Solicitor of the Treasury, and similar receipts from collectors of internal revenue should be sent to the Commissioner of Internal Revenue.

Receipts given to an officer for deposits of his disbursing funds to his own credit should be retained by him for his own security.

Reference is hereby made to the Secretary's circulars of December 15, 1869, relative to the transportation of public moneys by express, and November 23, 1869, relative to disbursing funds, and to the acts of August 6, 1846, March 3, 1857, and June 14, 1866.

GEO. S. BOUTWELL, *Secretary of the Treasury.*

No. 611.

DEPOSITS TO THE CREDIT OF THE TREASURER OF THE UNITED STATES.

TREASURY OF THE UNITED STATES,

Washington, D. C., ———, 187—.

SIR:—The want of accurate information which should be furnished by officers of the Government who deposit moneys to the credit of the Treasurer of the United States, and the consequent errors in the Certificates of Deposit issued, causes serious inconvenience and much embarrassment in the transaction of public business. I therefore request that, in future, when you deposit money to my credit, you will give exact information to the officer with whom the deposit is made as to the definite source from which the money was derived; especially stating, separately and specifically, the several classes of revenue, and making clear distinction between a Revenue Deposit and a Repay Deposit.

Customs, Tonnage, Marine-hospital Tax, Storage, Labor, and Drayage; Services of Officers; Fines, Penalties, and Forfeitures; Emolument Fees, Steamboat or Inspection Fees, Licenses to Pilots or Engineers, Mileage to Examiners; Internal Revenue Collections, Sales of Internal Revenue Stamps, Storekeepers' Salaries; Judiciary Fines, Penalties, and Forfeitures; Judiciary Emolument Fees; Sales of Public Lands, Sales of Indian Lands, Homestead Fees, Pre-emption Fees, Stumpage, Final Proofs, Commissions, Locating Agricultural College Scrip, Locating Military Bounty-land Warrants; Captured and Abandoned Property; Direct Tax from States; Consular Fees; Indian-trust Funds; Patent Fees; Surveys of Public Lands; Rent of Public Buildings; Semi-annual Duty; Sales of Government Property under Section 5, Act of May 8, 1872, viz:

"That all proceeds of sales of old material, condemned stores, supplies, or other public property of any kind, shall hereafter be deposited and covered into the Treasury as miscellaneous receipts, on account of 'proceeds of Government property,' and shall not be withdrawn or applied except in consequence of a subsequent appropriation made by law; and a detailed statement of all such proceeds of sales shall be included in the appendix to the book of estimates. But this section shall not be held to repeal the existing authority of law in relation to marine hospitals, revenue cutters, the clothing fund of the navy, or the sale of commissary stores to the officers of

the army. And it shall be the duty of the Register of the Treasury to furnish to the proper accounting officers copies of all warrants covering such proceeds, where the same may be necessary in the settlement of accounts in their respective offices." * * * *

and an Act amendatory thereof, viz :

" An Act to amend the fifth section of an Act entitled ' An act making appropriations for the legislative, executive and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-three, and for other purposes.'

" *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the fifth section of the act approved May eighth, eighteen hundred and seventy-two, making appropriations for the legislative, executive, and judicial expenses of the Government for the year ending June thirtieth, eighteen hundred and seventy-three, shall not be held to apply to materials, stores or supplies sold to officers and soldiers of the army, or to exploring or surveying expeditions authorized by law, and that said section shall not be held to repeal such part of paragraph 1032, Revised Army Regulations of eighteen hundred and sixty-three, as provides that the expenses of sales of military stores or supplies regularly condemned will be paid from their proceeds.

" *Approved June 8, 1872.*"

are Revenues, and must be separately stated in the Certificates of Deposit in each case.

Repayments are simply the redeposit to my credit of moneys previously advanced to U. S. Disbursing Officers, and the few exceptional deposits as provided in the above-cited Acts. In making deposits of this character, you should know and state—1st, that it is a repayment ; 2d, the bureau or officer, and date (year) of the appropriation, to which it belongs ; and, 3d, the source from which the money was received—whether from the Treasury direct, by requisition in your favor, or otherwise.

When you are authorized by the Secretary or by this Office to deposit money by your check on your account or in kind to my credit in one office, which money is to be paid or placed to your credit in some other office, the transaction, and only such an one, is a "*Transfer of Funds* from — (the office where you are to be paid) to — (the office where you deposit) as per Secretary's (or Treasurer's) letter —, 187—."

Very respectfully,

F. E. SPINNER, *Treas. U. S.*

No. 612.

TO ALL COLLECTORS, OFFICERS OR AGENTS OF THE TREASURY DEPARTMENT, ENGAGED EITHER IN THE COLLECTION OR TRANSFER OF THE REVENUE OF THE UNITED STATES.

TREASURY DEPARTMENT,

December 15, 1869.

It is deemed advisable, because of the changes which have taken place in the local revenue offices since the issue of Department's Circular dated October 1, 1866, upon the subject of transportation of the public revenue by express, and the non-observance of the regulations, either from want of information or neglect, to reissue that circular with some necessary modifications, and the especial attention of all revenue and depositary officers is called to the following regulations, which are furnished for their information and guidance, and are to be strictly observed :

A contract having been entered into between the Treasury Department and the Adams Express Company, for the transportation over all the lines of the said Adams Express Company, and through them of the American Merchants' Union, United States, Southern, Texas, New Jersey, Eastern, United States and Canada, National, Central, Harn-den, Howard's, Hope's, and Earle's Express Companies, of all moneys under the control of the Treasury Department, you are hereby directed to employ said companies for the necessary transportation of all moneys or stamps of the Treasury Department; said transportation to be made for the purposes of depositing the money transported with the Treasurer, an Assistant Treasurer, or authorized Depositary of the United States; for transmitting moneys collected on account of Internal Revenue or Customs from Deputy Collectors of Internal Revenue or Customs, to Collectors, the Treasurer, Assistant Treasurer, or United States Depositaries, and for transmitting stamps for spirits, beer and tobacco, from Collectors to their deputies, and for special purposes and under special circumstances, in accordance with instructions from the Department.

All moneys transmitted should consist of the sum of one thousand dollars or its multiples, as near as possible, and should be sent by the shortest practicable routes. The expenses of transportation will be paid by the Department and not by Collectors. Forms of vouchers and way bills, to be used by all United States officers and Express Companies or their agents in the transportation of money or stamps under this contract, have been prepared by the Treasury Department, and the use of these forms to the exclusion of all others is imperatively enjoined. They are furnished by the Secretary of the Treasury, on whom requisitions for them should be made, and are bound in books containing one hundred copies each. No more than one book at a time will be furnished to each officer entitled thereto. Although originally designed for the transportation of public moneys alone, yet the changes necessary to show the facts in each case where stamps are transmitted, or where other transportation authorized under this circular but not embraced in the original design of the forms, is required, will readily suggest themselves, and are directed to be made in each case; the object being to secure a full statement of the facts pertaining to every transaction.

The officers sending or receiving moneys or stamps will therefore certify, in this form of vouchers, to bills for services rendered; stating the sum transported, its character, between what points, and to what office the moneys or stamps were sent, the date, and that the services charged for were actually performed.

All officers or agents are cautioned to carefully count and pack their moneys or stamps to be transported, securing them in strong packages, sealed with their own private seal in at least four places; and with the amount, their own name and title, and the name and title of the consignee plainly marked on the wrapper, taking receipts in the established forms from the Express Companies for all sums transmitted.

All correspondence upon the above subjects from revenue officers should be addressed directly to the Secretary of the Treasury.

GEO. S. BOUTWELL, *Secretary of the Treasury.*

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No. 613.

THE PROPER DISPOSITION OF CERTIFICATES OF DEPOSIT.

TREASURY DEPARTMENT,

January 21, 1874.

The third Section of the Act of March 3, 1857, requires the forwarding forthwith to the Secretary of the Treasury of one of the certificates of deposit for every deposit of public moneys. As these certificates of deposit constitute an important check upon the transactions of the different Government Depositaries, and are required at the Treasury Department at the earliest possible moment for verification with the accounts of said Depositaries, the following regulations concerning their future disposition are hereby prescribed, which, as they are based upon express provisions of law, will be expected to be strictly complied with:

Hereafter the originals of all certificates of deposit for the deposit of any and all public moneys of every character and description, *except as stated in the next succeeding paragraph*, should be forwarded to the Secretary of the Treasury immediately upon their issue by the depositors, (not the Depositaries,) who, before transmitting them, should see that their amounts correspond with the amounts actually deposited by them.

EXCEPTIONS.

Those issued to Disbursing Officers for disbursing funds deposited to their own official credit, subject to the payment of their checks, and more properly called Disbursing Officers' receipts, should be retained in their own possession; those issued for the transfer of funds from one Government Depository to another, and on account of fractional currency, should be forwarded to the Treasurer of the United States; and those issued for the deposit of moneys pertaining to the Post Office Department should be forwarded to the Third Assistant Postmaster General.

Certificates of deposit should be issued as follows:

ON ACCOUNT OF CUSTOMS, &c.

Those in favor of Custom Officers at ports where Naval Officers are located, *in triplicate*; those in favor of Customs Officers at other ports, *in duplicate*; the duplicates of the former class to be transmitted to the Naval Officers, and the triplicates to be retained by the depositors; and of the latter class, the duplicates to be retained by the depositors.

INTERNAL REVENUE.

Those in favor of Collectors of Internal Revenue, or in favor of other parties on account of internal revenue collections, internal revenue stamps, or repayments of disbursing funds, *in triplicate*; the duplicates to be transmitted to the Commissioner of Internal Revenue, and the triplicates to be retained by the depositors.

SECRETARY'S SPECIAL ACCOUNTS.

Those issued for deposits to the credit of the Secretary of the Treasury, *in triplicate*; the duplicates, in cases of moneys accruing to the United States from violations of the internal revenue and direct-tax laws, to be forwarded to the Commissioner of Internal Revenue, and the triplicates to be retained by the depositors; in all other cases, both the originals and duplicates to be forwarded to the Secretary of the Treasury, and the triplicates to be retained by the depositors.

PATENT FEES.

Those issued on account of patent fees, *in triplicate*; the duplicates to be transmitted to the Commissioner of Patents, and the triplicates to be retained by the depositors.

SURVEYS OF PUBLIC LANDS.

Those issued on account of surveys of public lands, *in triplicate*; the duplicates to be forwarded either to the General Land-Office direct, or through the local land-office or Surveyor-General's office, and the triplicates to be retained by the depositors.

SALES OF PUBLIC LANDS, &c.

Those issued in favor of Receivers of Public Moneys on account of sales of public lands, &c., *in duplicate*; the duplicates to be retained by the depositors.

ARMY AND NAVY.

Those issued to military or naval officers, either on account of repayments, sales of public property, or otherwise, *in duplicate*; the duplicates to be retained by the depositors.

SEMI-ANNUAL DUTY.

Those issued on account of semi-annual duty, *in triplicate*; the duplicates to be transmitted to the Treasurer of the United States, and the triplicates to be retained by the depositors.

JUDICIARY.

Those issued to judicial officers, district attorneys, marshals, clerks of courts, &c., *in duplicate*; the duplicates to be retained by them.

MISSING COUPONS.

Those issued on account of coupons missing from bonds forwarded for redemption, or otherwise, *in triplicate*; both the originals and duplicates to be forwarded to the Secretary of the Treasury, and the triplicates to be retained by the depositors.

LOANS, INTEREST ON THE PUBLIC DEBT, CIVIL REPAYMENTS, CONSULAR FEES, MISCELLANEOUS AND OTHER RECEIPTS.

Those issued on account of subscriptions to any loan, repayments of interest on the public debt, civil repayments except as hereinbefore otherwise provided for, consular fees, miscellaneous and other receipts, *in duplicate*; the duplicates to be retained by the depositors.

GENERAL REMARKS.

In no case are certificates of deposit required to be filed with accounts rendered by Government officers to the accounting officers of the Treasury Department, nor does such a disposition of any certificates of deposit secure to the officers transmitting them proper credits in their accounts. Credits are only given officers in the settlement of their accounts upon warrants, which warrants are issued by the Secretary of the Treasury, and based upon the original certificates of deposit. In taking credit in their accounts current, however, for deposits made, officers should state specifically the date of the deposit, and the designation and location of the depository in which the deposit was made, as well as the source, &c. All original certificates of deposit in favor of military, naval, and other officers, the amounts of which are required to be listed and recorded in the offices of any of the heads of the bureaus

of the War, Navy, Interior, or other Executive Departments, will immediately upon their receipt—a record having first been made of them for verification with the proper depository accounts—be forwarded to the head of the respective Department to which the deposits pertain for designation of the proper appropriations, &c.

WM. A. RICHARDSON, *Secretary of the Treasury.*

III. TABLE OF SALARIES AND COMMISSIONS.

No. 614.

SALARIES OF RECEIVERS AND REGISTERS OF LAND OFFICES.

MONTHS, QUARTERS, AND FRACTIONS OF QUARTERS.—\$500 PER YEAR.

\$125 PER QUARTER. This column is only to be used in making monthly or quarterly payments.		FIRST QUARTER, 90 DAYS.		SECOND QUARTER, 91 DAYS.		THIRD AND FOURTH QUARTERS, 92 DAYS.	
FIRST QUARTER.		Days.		Days.		Days.	
January, 31 Days.....	\$43 10	1	\$1 39	1	\$1 37	1	\$1 36
February, 28 days.....	38 80	2	2 78	2	2 75	2	2 72
March, 31 days.....	43 10	3	4 17	3	4 12	3	4 08
		4	5 56	4	5 49	4	5 43
	\$125 00	5	6 94	5	6 87	5	6 79
		6	8 33	6	8 24	6	8 15
SECOND QUARTER.		7	9 72	7	9 62	7	9 51
April, 30 days.....	\$41 20	8	11 11	8	10 99	8	10 87
May, 31 days.....	42 60	9	12 50	9	12 36	9	12 23
June, 30 days.....	41 20	10	13 89	10	13 74	10	13 59
	\$125 00	11	15 28	11	15 11	11	14 95
		12	16 67	12	16 48	12	16 30
THIRD QUARTER.		13	18 06	13	17 86	13	17 66
July, 31 days.....	\$42 10	14	19 44	14	19 23	14	19 02
August, 31 days.....	42 10	15	20 83	15	20 60	15	20 38
September, 30 days.....	40 80	16	22 22	16	21 98	16	21 74
	\$125 00	17	23 61	17	23 35	17	23 10
		18	25 00	18	24 73	18	24 46
FOURTH QUARTER.		19	26 39	19	26 10	19	25 82
October, 31 days.....	\$42 10	20	27 78	20	27 47	20	27 17
November, 30 days.....	40 80	21	29 17	21	28 85	21	28 53
December, 31 days.....	42 10	22	30 56	22	30 22	22	29 89
	\$125 00	23	31 94	23	31 59	23	31 25
		24	33 33	24	32 97	24	32 61
LEAP YEAR—FIRST QUARTER.		25	34 72	25	34 34	25	33 97
January, 31 days.....	\$42 60	26	36 11	26	35 71	26	35 33
February, 29 days.....	39 80	27	37 50	27	37 09	27	36 68
March, 31 days.....	42 60	28	38 89	28	38 46	28	38 04
	\$125 00	29	40 28	29	39 83	29	39 40
		30	41 67	30	41 21	30	40 76
		31	43 06	31	42 58	31	42 12

NOTE.—For fractional parts of any month in the first quarter of leap year use the column under second quarter, the rate of pay being the same.

COMMISSIONS OF RECEIVERS AND REGISTERS OF LAND-OFFICES.

MONTHS, QUARTERS, AND FRACTIONS OF QUARTERS.—\$2,500 PER YEAR.

\$625 PER QUARTER. This column is only to be used in making monthly or quarterly payments.		FIRST QUARTER, 90 DAYS.		SECOND QUARTER, 91 DAYS.		THIRD AND FOURTH QUARTERS, 92 DAYS.	
FIRST QUARTER.		Days.		Days.		Days.	
January, 31 days.....	\$215 30	1	\$6 94	1	\$6 87	1	\$6 79
February, 28 days.....	194 40	2	13 89	2	13 74	2	13 59
March, 31 days.....	215 30	3	20 83	3	20 60	3	20 38
		4	27 78	4	27 47	4	27 17
	\$625 00	5	34 72	5	34 34	5	33 97
		6	41 67	6	41 21	6	40 76
SECOND QUARTER.		7	48 61	7	48 08	7	47 55
April, 30 days.....	\$206 00	8	55 56	8	54 95	8	54 35
May, 31 days.....	213 00	9	62 50	9	61 81	9	61 14
June, 30 days.....	206 00	10	69 44	10	68 68	10	67 93
	\$625 00	11	76 39	11	75 55	11	74 73
		12	83 33	12	82 42	12	81 52
THIRD QUARTER.		13	90 28	13	89 29	13	88 32
July, 31 days.....	\$210 60	14	97 22	14	96 15	14	95 11
August, 31 days.....	210 60	15	104 17	15	103 02	15	101 90
September, 30 days.....	203 80	16	111 11	16	109 89	16	108 70
	\$625 00	17	118 06	17	116 76	17	115 46
		18	125 00	18	123 63	18	122 28
FOURTH QUARTER.		19	131 94	19	130 49	19	129 08
October, 31 days.....	\$210 60	20	138 89	20	137 36	20	135 87
November, 30 days.....	203 80	21	145 83	21	144 23	21	142 66
December, 31 days.....	210 60	22	152 78	22	151 10	22	149 46
	\$625 00	23	159 72	23	157 97	23	156 25
		24	166 67	24	164 84	24	163 04
LEAP YEAR—FIRST QUARTER.		25	173 61	25	171 70	25	169 84
January, 31 days.....	\$212 90	26	180 56	26	178 57	26	176 63
February, 29 days.....	199 20	27	187 50	27	185 44	27	183 42
March, 31 days.....	212 90	28	194 44	28	192 31	28	190 22
	\$625 00	29	201 39	29	199 18	29	197 01
		30	208 33	30	206 04	30	203 80
		31	215 28	31	212 91	31	210 60

NOTE.—For fractional parts of any month in the first quarter of leap year, use the column under second quarter, the rate of pay being the same.

IV. ANNUAL SETTLEMENT OF ACCOUNTS.

No. 615.

TREASURY DEPARTMENT,

FIRST COMPTROLLER'S OFFICE,

Washington, July 13, 1871.

SIR:—By the provisions of the 5th, 6th and 7th sections of the act of July 12, 1870, it is declared to be unlawful to expend, in any one fiscal year, any sum in excess of appropriations made by Congress for that fiscal year, and unexpended balances are required to be carried to the surplus fund.

To carry into effect these provisions of law, annual settlements of your accounts for compensation and disbursements must be made.

The account to the 30th ultimo should embrace all compensation earned and all expenses incurred up to and including that date, so that no charges for services performed or articles purchased prior to the 1st instant shall appear in subsequent accounts. If you have already forwarded your account to the close of the fiscal year ending 30th ultimo, and any bills incurred during that year are still outstanding, they should be at once paid and forwarded with a special account to the proper accounting officer. And if any suspensions made during the year are still outstanding, awaiting explanation which you can make, please submit the explanations as soon as possible.

Upon the adjustment of your final account to the 30th June, you will be instructed what disposition to make of any unexpended balance, which is not to be carried into any subsequent account.

Very respectfully, your obedient servant,

R. W. TAYLER, *Comptroller*.

V. POSTAGE, STATIONERY AND FURNITURE.

No. 616.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,

August 18, 1869.

GENTLEMEN:—A proper regard to economy in the disbursement of the incidental appropriations for District Land-Offices, renders the following rules necessary, and in all cases hereafter they must be strictly observed:

1st. In future you will be required to furnish this office, annually, with a list of such articles of stationery as may be necessary for one year for both your offices, the year to begin from the date of such application. You will give the price of each article, and if the same shall be deemed reasonable and necessary, you will be authorized to make purchases, but any article deemed unnecessary, will of course be stricken from the estimate.

2d. You will furnish this office, annually, with a statement of the kind and description of all furniture in your offices, with the date of purchase, original cost, and present condition. Hereafter no new furniture of any kind will be purchased until a description of such as may be *absolutely necessary*, with an estimate of its cost, has been first submitted to this office and its approval given, and all articles in future required are to be of a plain and substantial description, without any unnecessary embellishments.

3d. When articles of either stationery or furniture may be authorized, and the purchase made, it devolves on the Receiver, in his capacity as Disbursing Agent, to defray the cost; in no case must the cost exceed the amount authorized, and in making payments the Receiver will be required to take receipts, the accuracy of which must be verified under oath by the party or parties from whom such purchases have been made, and the vouchers thus rendered must accompany the Receiver's disbursing accounts, and refer to the date of the authority from this office for the purchases of which they are the evidence.

Unauthorized expenditures will not be allowed.

Very respectfully, your ob't serv't,

JOS. S. WILSON, *Commssioner*.

REGISTER AND RECEIVER.

No. 617.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 30, 1871.

GENTLEMEN:—The Receiver, as Disbursing Agent, will pay the postage on all official letters, and at the end of each quarter he will transmit an account of the same, receipted by the Postmaster and verified by your affidavits, as vouchers to his quarterly disbursing account, in which the same may be debited.

Very respectfully your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER AT ———

No. 618.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., April 25, 1873.

TO REGISTERS AND RECEIVERS, AND SURVEYORS GENERAL:

SIRS:—Under the recent Act of Congress abolishing the franking privilege, no further allowances can be made after July 1, 1873, for postage on official letters, and all mail matter is required to be prepaid by stamps.

You are, therefore, requested to submit to this Office, at the earliest possible moment, an estimate of the number of each denomination of postage stamps that you will probably require for the official correspondence of your office during the quarter ending September 30, 1873; and you are directed to submit a like estimate for each succeeding quarter at least thirty days before the commencement of said quarter.

The denominations of stamps furnished the Department are as follows: 1-cent, 2-cent, 3-cent, 6-cent, 12-cent, 15-cent, 24-cent, 90-cent.

A prompt response to this communication is requested, in order that there may be no delay in supplying the stamps required.

Very respectfully, WILLIS DRUMMOND, *Commissioner*.

VI. DELIVERED AND UNDELIVERED PATENTS.

No. 619.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
June 27, 1872.

REGISTER AND RECEIVER, U. S. LAND-OFFICE.

GENTLEMEN:—You will please send to this Office, with as little delay as possible, a complete list of all patents remaining on your files undelivered, specifying the District Office at which each entry or location was made.

You will also send to this Office all of the duplicate receipts, dupli-

cate certificates and affidavits, with such other evidence as may be on your files, upon which patents have been delivered, and at the end of each month you will forward a written statement showing what patents have been delivered during the month, together with the duplicates or other evidence upon which such patents were delivered, with an indorsement on each showing when and to whom the patent therefor was delivered.

In Agricultural College Scrip locations you will give both the Register and Receiver's number and the number of the Scrip, with the name of the State in whose favor the same was issued; and in Warrant locations you will give the Register and Receiver's number and the number of the Warrant; and also state under what act the same was issued, and for how many acres.

Very respectfully, WILLIS DRUMMOND, *Commissioner*.

VII. CONSOLIDATED LAND OFFICES.

No. 620.

GENERAL LAND OFFICE,

July 25, 1869.

Annexed is a copy of the act of Congress "making further provisions in relation to consolidated land offices," approved February 18, 1861.

The first section of this act authorizes the Register "to charge and receive for making *transcripts for individuals*, or furnishing *any other record information* respecting public lands, or land titles in his consolidated land district, such fees as are properly authorized, by the tariff existing in the local courts in said district." It makes it the duty of the Receiver *to aid* the Register in the preparation of the transcripts, &c., aforesaid, and the *fees received therefor are to be divided equally* between the *Register and Receiver*, the whole amount of compensation of either, including salary, commissions, and *all fees*, to which they are entitled, under pre-existing laws, not to exceed \$3,000 per annum, or pro rata per quarter, the excess, if any, over that amount, to be paid into the Treasury of the United States.

In order to the proper adjustment of your accounts under this section of the act, all fees received under it, and under the act of 22d March, 1852, for locating military warrants, and the twelfth section of the act of 4th September, 1841, for adjudicating pre-emption claims, must be paid into the *hands of the Receiver*, who will keep separate records of all fees received under the several acts aforesaid, giving the date and amount received in each case, and will credit the United States with the whole amount of fees received in his monthly and quarterly accounts, rendered as *Receiver of public moneys*, in the same manner as required by the circular of the 27th April, 1857, in the case of fees for locating military warrants. The fee statements in every instance must be verified by the affidavits of the Register and Receiver, that they embrace all fees received during the period stated, and that the charges are in strict accordance with the law and the rates established by the courts within your district, and must be forwarded to this office with the Receiver's accounts for the month and quarter in which the fees are received.

The Receiver, as disbursing agent, will charge in his *disbursing*

account all fees received under the several acts herein mentioned, forwarding with his account separate vouchers for the amounts paid to the Register under said acts respectively.

The 2d section of the act, providing for office rent and clerk hire, is so plain in its terms as to render any instructions unnecessary. Before any allowance can be made *for office rent or for the employment of a clerk* by the Register, the absolute necessity for such service must be shown to the satisfaction of the Secretary of the Interior, and receive his sanction.

The 3d section extends the provisions of the act to all consolidated land-offices, and provides for all expenses incurred prior to the date of said act, by any Register or Receiver of such office, for additional clerical aid or office room.

Accounts for all claims under this section of the act must be properly rendered, accompanied by the proper vouchers. The vouchers covering the charges for clerk hire must state the number of days the parties were actually and necessarily employed, and the per diem allowance, and must be verified by the affidavit of the Register or Receiver, that such additional clerical aid was rendered absolutely necessary by the consolidation of the land-office to keep up the current public business; that the payments were made at the time stated in the vouchers; and that the charges are reasonable and just. The vouchers for office rent must also be verified by your affidavit, that the additional expense for room rent was made necessary by the consolidation; that the payments were made at the time specified in the vouchers; and that the charges are reasonable and just. The accounts, when properly rendered, as above indicated, will be submitted to the Secretary of the Interior, and, if approved by him, will be allowed; and if not, of course be rejected.

The 4th section of said act provides for an allowance to former Registers of consolidated land-offices for room rent and clerk hire, made *necessary by such consolidation*; and such claims will be allowed when presented and sustained by satisfactory vouchers.

Very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner*.

REGISTER AND RECEIVER.

An Act making further provision in relation to consolidated land-offices.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That from and after the passage of this act the register for the consolidated land districts at Booneville, in the State of Missouri, in consequence of additional duties imposed upon him, and in addition to the fees now allowed by law, shall be entitled to charge and receive for making transcripts for individuals, or furnishing any other record information respecting public lands or land titles in his consolidated land district, such fees as are properly authorized by the tariff existing in the local courts in said district: *Provided*, The whole amount of the Register's compensation, including all fees and commissions to which he is entitled under existing laws, shall not exceed three thousand dollars per annum, or pro rata per quarter; the excess, if any, over that amount, shall be paid into the Treasury of the United States; and the Receiver shall receive his equal share of such fees, and it shall be his duty to aid the Register in the preparation of the transcripts, or giving the record information as aforesaid.

SEC. 2. *And be it further enacted*, That the Secretary of the Interior be and he is hereby authorized to make a reasonable allowance for office rent for such consolidated office, and, when satisfied of the necessity therefor, to approve the employment by said Register of one or more clerks, at a reasonable per diem compensation, for such time as said clerk or clerks are absolutely required to keep up the current public business, and who shall be paid out of the surplus fees above authorized to be charged, if any, and if no surplus exists, then out of the appropriation for incidental expenses of district land-offices; but no clerk shall be so paid unless his employment has been first sanctioned by the Secretary of the Interior.

SEC. 3. *And be it further enacted*, That the provisions of this act be and they are hereby extended to all other consolidated land-offices: *Provided*, That this act shall be construed to extend to and provide for all expenses heretofore incurred by any Register or Receiver of any such consolidated land-office for additional clerical aid or office room: *Provided further*, That the amount of such indemnity be first approved by the Secretary of the Interior.

SEC. 4. *And be it further enacted*, That it shall be the duty of the Secretary of the Interior to make a reasonable allowance to former registers of consolidated land-offices for room rent and clerk hire, made necessary by such consolidation, to be paid out of the appropriation for incidental expenses of district land-offices, upon satisfactory vouchers actually filed, or to be filed.

Approved, February 18, 1861.

VIII. LEAVE OF ABSENCE.

No. 621.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., May 1, 1871.

GENTLEMEN:—In future, when leave of absence is desired for any purpose, timely application therefor, stating specifically the reasons and circumstances rendering such absence necessary, should be addressed and forwarded directly to this office. All applications will be laid before the Head of the Department, with such recommendation as the circumstances of the case may warrant, and the leave will be granted or withheld, as may seem just and proper to the Honorable Secretary of the Interior.

But in the meantime, and until the decision of the Department is received, the officer will remain in the proper discharge of his official duties.

In view of the unusual number of applications for leave which have lately been made, it becomes necessary for me to announce that you are expected to remain at your post, and give strict personal attention to the duties devolving upon you, and that hereafter leaves of absence will be granted only for reasons of the most urgent character, and for the shortest possible time, and then only upon the following conditions, viz:

First. That in case of a Surveyor-General, he shall place his office in charge of his chief clerk, for whose official acts he will be held respon-

sible under his official bond, and such clerk, before entering upon duty, must take and subscribe the oath or affirmation prescribed by the Act of Congress approved July 2, 1862 — (*Statutes at Large*, vol. 12, p. 502.)

And in case of Register or Receiver, such officer shall place his office in charge of a competent and reliable clerk, for whose acts he will be held responsible under his official bond, and such clerk, before entering on duty, shall take and subscribe the following oath or affirmation, which must be transmitted to this office:

"I, A. B., having been employed by C. D., (Register or Receiver, as the case may be,) of the Land Office at ———, as clerk in his office, do solemnly swear (or affirm) that I will truly and faithfully execute the trust committed to me according to law, and regulations and instructions made in conformity thereto: So help me God."

Second. That as the clerk left in charge of the office of Surveyor General, Register or Receiver, cannot be authorized to sign any official paper or document, such officer shall make arrangements to affix his signature to all official papers and documents required to be issued from his office during his absence; and in no instance can a Register be authorized to leave his office in charge of the Receiver, or *vice versa*.

Third. That if an officer shall be and remain absent from duty for more than thirty days within a year, he shall not receive pay or emolument, either in salary or otherwise, during the period of his absence from official duty, unless in special cases, in which good and satisfactory cause shall be shown therefor to this office.

Fourth. That upon return to duty the officer shall report by letter to this office the exact period of his absence.

As applications for leave are frequently made by officers on the ground that the public interests committed to them require their presence at the seat of government, I take this occasion to say that it is the duty of this office to look after the public interests coming under its supervision, and that in the discharge of this duty the personal presence and assistance of district officers is rarely if ever required. Should the presence of such officers be desired, at any time, for this or other reasons, timely notice to that effect will be given.

In this connection I deem it proper to refer to fact that some officers are in the habit of absenting themselves from official duty, for short periods, without proper authority, and to state that its impropriety and incompatibility with the proper and faithful discharge of official duty is manifest, and that in future unauthorized absence, for however short a period, will not be tolerated.

You are requested to acknowledge the receipt hereof at your earliest convenience.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

TO REGISTERS AND RECEIVERS AND SURVEYORS GENERAL.

Approved: C. DELANO, Secretary of the Interior.

IX. TRAVELING EXPENSES.

No. 622.

ALLOWANCES FOR TRAVELING EXPENSES.

TREASURY DEPARTMENT,

Washington, August 1, 1874.

The following provisions of the Act entitled "An Act making appropriations for the support of the Army for the fiscal year ending June thirtieth, one thousand eight hundred and seventy-five, and for other purposes," approved June 16, 1874, is hereby published for the information and guidance of the officers and employes of this Department:

"*Provided*, That only actual traveling expenses shall be allowed to any person holding employment or appointment under the United States, and all allowances for mileage and transportation, in excess of the amount actually paid, are hereby declared illegal; and no credit shall be allowed to any of the Disbursing Officers of the United States for payments or allowances in violation of this provision."

In accordance with the foregoing provision, persons traveling upon the official business of this Department will hereafter be allowed their "actual traveling expenses," usual and essential to the ordinary comfort of travelers, embraced in the following items of expenditure:

I. Actual fares on railroads, steamboats, and other vessels, by the shortest practicable route, the hire of special transportation where there are no regular means of conveyance, street-car, or omnibus, or transfer-coach fare to and from depots and hotels, and, where there are no such conveyances, moderate and necessary hack-hire, and reasonable fees to porters and expressmen.

II. Sleeping-car fare for one double berth for each person, or customary state-room accommodation on steamboats and other vessels, one seat in parlor car, and lodgings and actual board in hotels, at a rate not greater than five dollars per day. Hotel bills and receipts will be taken in all cases where it is practicable to obtain them, and accompany the account as a voucher.

No charge will be allowed for hotel bills when the detention is unnecessary for the performance of the duties for which travel is required.

An affidavit that the account is just and true in all respects, and that the expenses charged therein were actually and necessarily incurred, must accompany each bill. In all cases the account must contain the items of expenditure; and a copy of the order under which the travel was made must accompany it.

CHAS. F. CONANT, *Acting Secretary*.

No. 623.

GENERAL ORDER.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., July 1, 1874.

Hereafter the expenses of all officers of the Government, or other persons, when traveling on duty or other public business for or on account of this Department, or any of the Bureaus connected therewith, will be confined to "actual traveling expenses," usual and essential to the ordinary comfort of travelers, and will embrace the following items of expenditure only, viz:

I. Fares upon railroads, steamboats, packets, or other usual modes of conveyance.

II. Hire of special transportation, either by land or water, when there are no regular means of conveyance.

III. Ferriage, tolls, and horse-keeping when transportation is hired.

IV. Street-car, or omnibus, or transfer-coach fare to and from depots and hotels, and, where there are no such conveyances, moderate and necessary hack-hire, not exceeding the legal rates; also baggage fees to porters.

V. Sleeping-car fare for one double berth for each person, or customary state-room accommodation on boats, steamers, etc.

VI. Lodging and meals in hotels, *en route*.

VII. Hotel expenses, not exceeding four dollars per day, when the detention is incident to, or necessary for, the performance of the duties for which the travel is ordered.

VIII. Necessary meals, *en route*, but for no other items of refreshment than the ordinary food provided for travelers.

No charge will be allowed for hotel bills when the detention is unnecessary for the execution of the orders under which the journey is performed, nor for meals furnished on steamers or other means of conveyance which are included in the charge for fare.

Every officer or other person traveling as above indicated will keep a memorandum of the expenditures herein allowed, noting each item upon its being made, and the certificate, in the case of an officer, or affidavit, in the case of any other person, to be made on the voucher, will set forth that the different charges in detail therein have been taken from and verified by his memorandum; that they are correct and just; that the amount charged was actually paid; that the number of days for which the same is charged was necessarily consumed in unavoidable delays incident to travel, and in the performance of the duty ordered or services rendered, and that the journey was performed with all practicable dispatch by the shortest usually traveled routes, under orders, [copy annexed,] or for the purpose of —, [here the object of the journey should be fully stated.]

When unusual routes or expensive means of transportation are charged for, explanatory certificates, setting forth the necessity for the same, must accompany the accounts, and, if approved by the Head of the Department or the Chief of the Bureau, such charges will be allowed.

Any officer or other person traveling on duty or public business as herein provided, over any of the railroads below named, to which grants or subsidies have been made by the United States, and from which payment for freight and transportation furnished for Government service is, by the 2d section of an act of Congress approved March 3, 1873, (U. S. Statutes at Large, vol. 17, p. 508,) directed to be withheld, will exhibit his order to the proper officer of the railroad company and request transportation, and on receiving the requisite order therefor will give the company the necessary voucher for the amount of the fare.

The railroads above referred to are as follows, viz:

The "Central Pacific," "Kansas Pacific," "Union Pacific, Central Branch," "Union Pacific," "Western Pacific," and the "Sioux City and Pacific."

All previous orders of this Department in relation to the foregoing subject are hereby revoked. C. DELANO, *Secretary*.

GENERAL ORDER.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Sept. 21, 1874.

The following is substituted for Paragraph VII. of a General Order, dated July 1, 1874, issued by the Department, viz:

VII. Hotel expenses, not exceeding *five* dollars per day, when the detention is incident to, or necessary for, the performance of the duties for which the travel is ordered.

C. DELANO, *Secretary of the Interior*.

TITLE XVI.—MISCELLANEOUS RULINGS AND
INSTRUCTIONS.

I. GRADUATION ENTRIES.

No. 625.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 25, 1873.

GENTLEMEN:—I send for your information the annexed copy of an act of Congress entitled "An act to confirm certain entries of land therein named," approved February 17, 1873. [See Part II., No. 87.]

This act refers to a class of entries which were allowed at the reduced price for settlement and cultivation under the graduation law of August 4, 1854, which was repealed by the act of June 2, 1862. The act of Congress of 3d March, 1857, confirmed entries made prior to its passage under the graduation law, which were regular in every respect, and not fraudulent or evasive of the law, leaving those entries allowed under the same law subsequent to the 3d March, 1857, and prior to the repeal of the law, to stand on the original basis, which required that the parties should produce satisfactory proof of settlement and cultivation before the patents could be issued at the reduced price paid; or where such proof could not be made, the parties interested could perfect the entries and have the patents issued as in ordinary cases, by paying up the difference between the reduced price paid under the graduation law and the ordinary minimum of \$1.25 per acre. There is consequently a large number of entries for which the patents remain undelivered on the files of this Office, the parties having neither produced the proof of settlement and cultivation, nor made the additional payment for the land, one or the other of which was required to entitle them to the patents. It is with regard to these entries that the act of February 17, 1873, (copy annexed,) dispensing with the requirement of proof or payment, provides for issuing the patents in all cases where the entries were regularly made, where they have not been annulled and vacated by this Office on account of fraud, evasion of law, or other special cause, and where they may not be ascertained to have been fraudulently or evasively made. This Office will accordingly issue the patents for these entries, as in ordinary cases, on surrender of the duplicate receipts by the parties, if the entries be regular and unimpeached on the official records. It is desired that you diffuse information of this as far as practicable in the discharge of your official duties.

Very respectfully, your obedient servant,

WILLIS DRUMMOND, *Commissioner*.

REGISTER AND RECEIVER.

II. AGRICULTURAL COLLEGE SCRIP.

No 626.

CIRCULAR.

Application of Agricultural College Scrip to Pre-emptions.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

July 22, 1870.

GENTLEMEN:—In the act of Congress approved July 27, 1868, U. S. Statutes, vol. 15, page 227, it is declared:

"That in no case shall more than three sections of public land of the United States be entered in any one township by scrip issued to any State, under act approved July second, eighteen hundred and sixty-two, for the establishment of an Agricultural College therein."

And the act of July 1, 1870, is to the following effect: (Part II., No. 18),

These two acts must now be taken together, and construed accordingly. Therefore:

1st. The said act of 27th July, 1868, is held to be still in force, to the extent of restricting ordinary scrip locations, *not pre-emptions*, to three sections in one township, with the interdict of not exceeding one million acres in any one State, as heretofore allowed, confining each selection to a technical quarter section.

2d. By the amendatory act the restriction is removed, so far as relates to *pre-emption entries*; and the scrip may be received in payment of such entries, without limitation as to the quantity located in a township, or in any one State.

3d. The allowance, by said act of July 1, 1870, of such payment, "in the same manner and to the same extent as is now authorized by law in case of Military Bounty-Land Warrants," will authorize the application of the same rule in each case; and you will be guided by your instructions in warrant locations in payment of pre-emptions, in adjudicating claims under this act.

4th. The scrip may be located, in *pre-emption entries*, on any tract forming a compact body not exceeding 160 acres, though not embraced in a technical quarter section.

5th. An inconsiderable excess, not sufficient to invalidate the pre-emption claim, should be paid for with cash, agreeably to the rule and practice in warrant locations.

6th. Double minimum land must be treated as in case of a warrant; payment in cash being required to the amount of \$1.25 per acre, where scrip is offered in *part* payment for such lands.

7th. The interdict in the last proviso of the 3d section of the act of 28th September, 1850, vol. 9, page 521, forbidding the location of warrants upon the improvements of actual settlers, applies to locations under this act.

These locations will be entered in your monthly abstract of agricultural scrip locations in regular order, with special notes on each abstract, and on the papers in each case, referring to such locations as *pre-emptions*.

Very respectfully,

JOS. S. WILSON, *Commissioner*.

REGISTER AND RECEIVER.

NOTE.—As the Agricultural College Scrip heretofore issued has been extensively counterfeited, purchasers are cautioned against imposition from

this cause. It is suggested that, by proper care in purchasing from none but responsible parties, well known to the pre-emptor, and in all cases requiring a receipt for the consideration paid, accompanied with a guaranty for indemnification in case the scrip shall prove counterfeit, the settler may in most cases protect himself from loss in the use of the scrip.

JOS. S. WILSON, *Commissioner*.

No. 627.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 8, 1872.

GENTLEMEN:—By circular of July 22, 1870, you were instructed in regard to receiving Agricultural College Scrip in payment for pre-emption claims, under the act of July 1, 1870. (Part II., No. 18.)

On the 29th ultimo, the Hon. Secretary of the Interior decided that said Scrip may also be received in commuting homestead entries under the 8th section of the act of May 20, 1862, and you will receive it in such cases accordingly.

The instructions contained in the circular mentioned, regarding pre-emption scrip locations, will apply to the locations contemplated in commuting homesteads; but you will indicate the latter on the monthly abstract of scrip locations, and on the papers issued therefor, by special notes, referring by number to the commuted homestead entry.

Very respectfully, WILLIS DRUMMOND, *Commissioner*.

No. 628.

GOVERNOR OF TEXAS.

A joint resolution of the State of Texas authorized the Governor to receive a certain scrip and "sell the same." The Governor executed a power of attorney to the Secretary of State of Texas, and authorized him to receive and sell.

Held—That the Secretary of State had no power to sell.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, June 6, 1871.

SIR:—I have considered the question submitted by the letter of the Commissioner of the General Land-Office, and relating to the power of the Governor of Texas to authorize the Secretary of State to make sale of the Agricultural College Scrip belonging to the State of Texas.

The joint resolution of the Legislature of said State authorizes the Governor "to receive the land scrip provided to be issued by said act and to sell the same."

The resolution reposes a personal trust and confidence in the Governor, and does not authorize him to substitute another; and I am of opinion that he cannot delegate that trust to another.

Lyon v. Jerome, 26 Wend. 485. *Bocock v. Pavay*, 8 Ohio State, 210. *Lynn v. Burgoyne*, 13 B. Mon. 215.

I think that a sale made by the Secretary of State should not be recognized by the land-office.

Very respectfully,

WALTER H. SMITH, *Assistant Attorney-General*.

HON. C. DELANO, *Secretary of the Interior*.

III. PRIVATE LAND, PORTERFIELD AND VALENTINE
SCRIP.

No. 630.

JOHN LYNDE.

Scrip, not specially made so by provision of law, is assignable, and private land scrip may be located in the name of the assignee.

Entries made with private-land scrip cannot be patented.

A certificate of entry is full evidence of title to the land entered.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Aug. 4, 1875.

SIR:—I have considered the appeal taken in behalf of the heirs of John Lynde from your decision of June 25, 1873, in the matter of their claim to certificates of location under the sixth section of the Act of June 22, 1860, (12 Stats., 85.)

You held, substantially, that the heirs were entitled to such certificates for 9,740 $\frac{1}{4}$ acres of land, to be issued in the names of the original confirmees, "and to their legal representatives," but that no entries would be permitted except in the names of said original confirmees. From this decision appeal has been taken to the Department, and two questions arise for consideration, viz:

1st. Is this scrip assignable?

2d. Can entries made with it be patented?

Since the appeal now under consideration was filed, the claimants have accepted the scrip in the form prescribed by you, but still insist that the same is assignable; that entries can be made in the name of the assignee, and that such entries when made can be patented.

Independently of the abstract question whether scrip issued in the usual form, and locatable on unappropriated public land, is, without a special provision of law to that effect, assignable, I am clearly of the opinion that the scrip issued in this case is locatable under its terms by any assignee of the persons named therein. It is issued to certain specified persons and their "legal representatives." I can see no reason whatever why a "legal representative," properly shown to be such, may not locate the scrip exactly the same as if he were specifically named therein.

The scrip runs to A. B. or some person to be identified as a "legal representative" of A. B. A. B. may use the scrip in his own name, or any one properly identified as his "legal representative" may use it in *his* own name.

The term "legal representative" embraces a representative by contract, a grantee, or assignee, as well as a representative by operation of law, (*Hogan v. Page*, 2 Wall., 607; *Carpenter v. Rannels*, 19 Wall., 145.)

In this view of the law, assignees of this scrip should be recognized as legal representatives, and allowed to locate the same exactly as though they were specifically named therein.

The first abstract question raised by the appeal, viz: Whether scrip, not specifically made so by provision of law, is assignable, I have no hesitation in answering in the affirmative. Scrip of this character is intended by law to compensate the donee for loss of a valuable interest or estate in lands, oftentimes for a vested interest protected by the laws of nations, the laws of the United States, and by treaty obligations. The original right, under the fundamental principles of both civil and common law, was alienable. Scrip representing the original estate is a valuable right, and for like reasons is assignable.

The uninterrupted current of modern decisions tends to establish the principle that any valuable interest in real estate under our public land system, even if inchoate and imperfect, is assignable in the absence of express legislative prohibition. (*Threadgill v. Pintard*, 12 How., 24; *Sparrow v. Strong*, 3 Wall., 97; *Davenport v. Lamb*, 13 Wall., 418; *Lamb v. Davenport*, 18 Wall., 307; *Myers v. Croft*, 13 Wall., 296.)

In the last cited case it is expressly so held. In this case, speaking of a pre-emption right, an inchoate, imperfect, and defeasible interest, the courts say: "This right was valuable, and, independently of the legislation of Congress, assignable."

• Following these authorities, I have for some time uniformly held that valuable rights acquired under our public-land system were, in the absence of express legal prohibition, assignable, (**Wilson v. C. & O. R. R. Co.*, Sec.'s Dec'n Feb. 17, 1873; 2 Opin., A. A. G., p. 76, claim under Section 7, Act of July 23, 1866; †*Heirs of Were v. R. R.*, Sec.'s Dec'n March 27, 1873, claim under Joint Resolution of April 10, 1869; see *Heirs of Coleman Fisher*, Sec.'s Dec'n, Feb. 16, 1874, claim under Act of May 14, 1834.)

The case under consideration seems nearly identical with that which arose under the Act of July 4, 1836, and was referred by the Secretary of the Treasury to Attorney General Butler for his opinion. The Attorney General in his opinion (3 Opin., 355) says: "In my opinion the individuals who appeared as claimants before the Commissioners, and who have obtained their favorable decisions, are the persons who are to be recognized at the General Land Office as the confirmees under the Act of July 4, 1836, and that the same persons, and those deriving title from them by descent or purchase, are also the parties who are entitled to locate under the second section of that Act."

Upon full and careful consideration, I am clearly of the opinion that this scrip is assignable, and when assigned may be located in the name of the assignee; and I so hold, reversing in this respect your decision now under consideration.

With reference to the second question raised, I agree with you that entries made with this scrip, as the law now stands, are not patentable. The rule that a patent cannot issue except in pursuance of some explicit provision of law is too well settled, and has been too long and uniformly followed by the Department, to now admit of question.

I am also of opinion that in this case a patent is not absolutely necessary for the full protection of the claimants, inasmuch as a certificate of entry in the name of the assignee will be evidence of full relinquishment by the United States of all her interests in the land located.

I return the papers transmitted with your letter of September 17, 1873.

Very respectfully, C. DELANO, *Secretary*.
To the Commissioner of the General Land-Office.

No. 631.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., October 8, 1874.

GENTLEMEN:—The act of Congress approved June 22, 1860, entitled "An Act for the final adjustment of Private Land Claims in the States

*No. 457. †No. 561.

entitled "An Act to extend the provisions of an act entitled 'An Act for the final adjustment of Private Land Claims in the States of Florida, Louisiana, and Missouri, and for other purposes,'" and as extended and amended by an act of Congress approved June 10, 1872, entitled "An Act to extend the provisions of an act entitled 'An Act for the final adjustment of Private Land Claims in the States of Florida, Louisiana, and Missouri, and for other purposes.'"

Now, THEREFORE BE IT KNOWN, That on surrender of this certificate to the Register of any land-office of the United States the said _____ or _____ legal representatives shall be entitled to enter, in satisfaction of said claim, the quantity of _____ acres upon any of the public lands of the United States, to which no adverse right exists, except in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida, where the disposal of public lands is restricted to homestead actual settlement by the act of Congress approved June 21, 1866, (14 Stat., p. 66.) "Provided, That said entry be made only on lands subject to private entry at one dollar and twenty-five cents per acre, and as far as may be possible in legal divisions and sub-divisions, according to the surveys made by the United States."

_____, Commissioner.

(B.)

Acts of June 22, 1860, March 2, 1867, and June 10, 1872.

REGISTER AND RECEIVER. }

No. _____

SCRIP No. _____

Scrip issued by virtue of a decree rendered on the _____ day of _____ by the Supreme Court of the United States for the claim of _____ or _____ legal representatives.

I, _____, hereby apply to locate with the above-described certificate _____ quarter of Section No. _____, in Township No. _____, of Range No. _____, containing _____ acres, in the district of lands subject to sale at _____.

Witness my hand this _____ day of _____, A. D. 187 .

ATTEST:

_____, Register.

_____, Receiver.

UNITED STATES DISTRICT LAND OFFICE AT _____, _____, 187—.

We certify that the above-described tracts have this day been located pursuant to the application, and that the location is correct, being in accordance with law and instructions.

_____, Register.

_____, Receiver.

(C.)

Acts of June 22, 1860, March 2, 1867, and June 10, 1872.

CERTIFICATE OF ENTRY.
REGISTER AND RECEIVER'S No. —: }

UNITED STATES DISTRICT LAND-OFFICE AT —, —, 187—.

WE CERTIFY that Certificate of Location No. —, for — acres,
issued by virtue of a decree rendered on the — day of —, by
the Supreme Court of the United States, has this day been located
by — on the — quarter of Section No. —, in Township
No. —, of Range No. —, containing — acres.

—, Register.
—, Receiver.

(D.)

Abstract of locations made with Scrip, in satisfaction of Private Land Claims, under
act of June 22, 1860, at the Land-Office at —, in the month of —, 18—.

DATE OF LOCATION	Register and Receiver's No.	Scrip No.	TRACTS LOCATED.				AREA. Acres.	BY WHOM LOCATED	REMARKS.
			Part of Section.	Sec- tion.	Town- ship.	Range.			

LAND OFFICE AT —, —, 18—.
—, Register.
—, Receiver.

No. 632.

FORM OF PRIVATE LAND SCRIP. No. 1.

CERTIFICATE OF LOCATION, } ACT OF JUNE 2, 1858.
No. — }
Claim of —.

SURVEYOR-GENERAL'S OFFICE,
—, 187—.

I hereby certify that by the act of Congress, approved —, —,
entitled —, the claim of —, entered as No —,
in the report dated —, of —, is confirmed to — acres of
land, of which there remains unsatisfied the quantity of — acres,
which quantity the said claimant — entitled to locate pursuant to the
provisions of the 3d section of the act of Congress approved June 2,
1858, entitled "An Act to provide for the location of certain confirmed
private land claims in the State of Missouri, and for other purposes."

Now, therefore, be it known that on surrender of this certificate to the Register of any Land-Office of the United States, the said _____ or — legal representatives, shall be entitled to locate, in part satisfaction of said claim, the quantity of eighty acres "upon any of the public lands of the United States subject to sale at private entry at a price not exceeding one dollar and twenty-five cents per acre: *Provided*, That such location shall conform to legal divisions and subdivisions."

_____,
Surveyor-General
_____ of _____

GENERAL LAND OFFICE,
_____, 187 .

The foregoing Certificate or Scrip, having been lawfully issued by the Surveyor-General _____, is receivable, according to its terms, at any Land-Office in the United States, for the location of land subject to entry at private sale, and to which no adverse right exists, except in the States of Alabama, Mississippi, Louisiana, Arkansas and Florida, where the disposal of public lands is restricted to Homestead actual settlements, by the act of Congress approved June 21, 1866. (U. S. Statutes, vol. 14, p. 66.) It is subject to location by the holder, but the patent, when issued for the location made, will be in the name of _____, or his legal representatives.

_____, Commissioner.

No. 633.

FORM OF PRIVATE LAND SCRIP NO. 2.

CERTIFICATE OF LOCATION.

No. _____ Acres.

Acts of June 22, 1860, March 2, 1867, and June 10, 1872.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., _____, 187—.

I hereby certify, That by _____ the claim of _____ has been confirmed to the extent and quantity of _____ acres of land, of which there has been sold by the United States prior to said confirmation, or cannot be surveyed or located, the quantity of _____ acres, which quantity the said claimant _____, entitled to enter pursuant to the provisions of the sixth section of the act of Congress approved June 22, 1860, entitled "An act for the final adjustment of Private Land Claims in the States of Florida, Louisiana, and Missouri, and for other purposes," as extended by the act of Congress approved March 2, 1867, entitled "An act to extend the provisions of an act entitled 'An act for the final adjustment of Private Land Claims in the States of Florida, Louisiana and Missouri, and for other purposes,'" and as extended and amended by an act of Congress, approved June 10, 1872, entitled "An act to extend the provisions of an act entitled 'An act for the final adjustment of Private Land Claims in the States of Florida, Louisiana, and Missouri, and for other purposes.' "

Now, therefore, be it known, That on the surrender of this certificate to the Register of any land-office of the United States, the said above named part — or — legal representatives shall be entitled to enter,

in part satisfaction of said claim, the quantity of _____ acre _____ upon any of the public lands of the United States to which no adverse right exists—except in the States of Alabama, Mississippi, Louisiana, Arkansas, and Florida, where the disposal of public lands is restricted to homestead actual settlement by the act of Congress approved June 21, 1866, (14 Stats., p. 66,) “provided that said entry be made only on lands subject to private entry at one dollar and twenty-five cents per acre, and as far as may be possible in legal divisions and subdivisions, according to the surveys made by the United States.” _____, *Commissioner*.

No. 634.

BOVARD v. BUNN.

Mere naked possession does not run against the government.

Land covered by an erroneous entry on the books of the local office is not subject to private entry and can only be made so by the regular publication of notice.

Porterfield Scrip may be located on any of the public lands which have been or may be surveyed, and which have not been otherwise appropriated at the time of such location, on both offered and unoffered lands.

DEPARTMENT OF JUSTICE,
OFFICE OF ASSISTANT ATTORNEY GENERAL,
Washington, Oct. 24, 1871.

SIR:—I have considered the case of *Bovard v. Bunn*, involving the right to W. $\frac{1}{2}$ S. W. $\frac{1}{4}$ of Sec. 29, T. 19 N., R. 2 E., 4th P. M., Illinois.

On the first day of October, 1839, one Lawrason Riggs made application to the District Office at Galena, Illinois, to purchase at private entry the W. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of Sec. 29, T. 19 N., R. 2 E. The application was allowed and a patent was issued for the tract November 10, 1841. The application, original certificate and receipt, the abstract, the tract book of the General Land-Office, and the patent, all called for the W. $\frac{1}{2}$ S. E. $\frac{1}{4}$ of said township and range. The records of the county where the land is situated, however, show an entry Oct. 1, 1839, of a duplicate receipt, U. S. Receiver to Lawrason Riggs, for W. $\frac{1}{2}$ S. W. $\frac{1}{4}$, Sec. 29, T. 19 N., R. 2 E.

In the year 1846 this last-described tract of land was sold by the county sheriff for taxes, and again in 1849, by the same officer, for like purposes. In 1850 it was declared forfeited, and again sold. A deed for taxes was issued by the sheriff, February 3, 1853, which said, title in the year 1858 passed to James Bovard.

Bovard paid a valuable consideration for the land, after an examination of the county records, and the tract book at the local land-office, both of which called for the W. $\frac{1}{2}$ of S. W. $\frac{1}{4}$. He has occupied the land continuously, made valuable improvements, and has regularly paid all taxes assessed upon it.

Sometime in the month of February, 1870, the error in the local office tract book and the county record was called to the attention of Mr. Bovard, who thereupon commenced a correspondence with the General Land-Office on the subject. Upon comparing said tract book with the rest of the papers in the case, the mistake upon it was corrected by order of the Commissioner.

Several applications were made during the months of March and

April, 1870, to enter the W. $\frac{1}{4}$ of S. W. $\frac{1}{4}$ at private entry, all of which were refused, on the ground that the tract having been reserved by an erroneous entry in the tract book, was not again subject to private entry, unless regularly restored by published notice under the established rules and regulations of the General Land-Office.

On the 10th day of April, 1870, John W. Bunn made application to locate the tract with two shares of Porterfield Scrip, for forty acres each. His application was allowed by the local officers on the ground that the scrip could, by special provision of the act authorizing its issue, be located upon unoffered as well as offered land. This view of the case was also taken by the Commissioner of the General Land-Office in his decision of June 28, 1871, from which an appeal has been taken to the Secretary.

Bovard asks to be allowed to take the land at private entry.

The Commissioner, in substance, holds, that the land having been covered by an erroneous entry on the books of the local office, is not, under law, and the rules and regulations of the General Land-Office, now subject to private entry, and can only be made so by the regular publication of notice; that Porterfield Scrip can be located upon unoffered as well as offered land, and consequently was applicable to the tract in controversy on the 10th day of April, 1870.

That this view of the law was the true one, I have as little doubt as I have that its application will, in this particular, work an almost unparalleled hardship and injustice. Equitably there is but one side to the case. Bunn has no standing whatever outside of the legal technicality which gives him the houses and land of another man. But the law is imperative and admits of but one construction.

The act authorizing the issue of Porterfield Scrip, (12 Stat., 836,) provides that such scrip may be located "on any of the public lands which have been or may be surveyed, and which have not been otherwise appropriated at the time of such location."

The language is broad, "any lands" not "otherwise appropriated." This means any public land not regularly appropriated by virtue of some provision of law for its disposition. The tract of land in controversy is in this sense "unappropriated." It is covered by no valid claim against the United States under any of its laws. An erroneous marking on the books having deceived the public as to its *status* in the market, it has never been applied for or sold.

The title of Bovard is that of mere naked possession, which does not run against the government. He has never initiated a valid claim, and he is unable now to acquire the land at private entry on account of its temporary reservation from such disposition by law and the regulations of the department. While the tract was in this condition, unoffered and unappropriated, an application was made to locate it with scrip which was applicable to this very class of lands.

In my opinion it was the imperative duty of the local officers to accept the scrip and allow its location on the land in controversy.

The rule that tracts erroneously marked on the books are thereafter not subject to private entry until regularly restored by public notice is too well settled to be seriously questioned. It was adopted in 1836, has been since continuously followed by the General Land-Office and the Department, and it at an early day received the sanction of the Attorney-General of the United States. (3 Opin., 274.)

I see no remedy for the hardship this necessary construction of law

places upon Mr. Bovard, except such, if any there be, as may be given by the laws and courts of Illinois.

I recommend that the decision of the Commissioner be affirmed.

Very respectfully,

W. H. SMITH, *Assistant Attorney-General.*

HON. C. DELANO, *Secretary of Interior.*

Concurred in by the Secretary, Nov. 2, 1871.

No. 635.

WM. P. BROWN.

Held—That Porterfield Scrip could be located on land withdrawn, unless the withdrawal was authorized by a law which appropriated the land to some specific purpose.

Decision by Acting Secretary Smith, July 25, 1872.*

No. 636.

FORM OF PORTERFIELD WARRANT.

Special Act of Congress of April 11, 1860.

DEPARTMENT OF THE INTERIOR.—REVOLUTIONARY BOUNTY LAND-WARRANTS.—GENERAL LAND-OFFICE.

No. ———

—————Forty Acres.

WHEREAS, by an Act of Congress approved on the 11th day of April, 1860, entitled "An act for the relief of the legal representatives of Charles Porterfield, deceased," it was enacted that the Secretary of the Interior should "issue to William Kinney and Thomas J. Michie, Executors of the last Will and Testament of Robert Porterfield, deceased, a number of Warrants, equal to Six Thousand One Hundred and Thirty-three acres of land, according to the usual subdivisions of the public Surveys, in quantities not less than forty acres; to be by them located on any of the public lands which have been, or may be surveyed, and which have not been otherwise appropriated at the time of such location, within any of the States or Territories of the United States, where the minimum price for the same shall not exceed the sum of one dollar and twenty-five cents per acre; to be selected and located in conformity with the legal subdivisions of such Surveys, and appropriated according to the directions contained in the last Will and Testament of the said Robert Porterfield, deceased, in the same manner and for the purposes directed in regard to the lands which have been lost by the said legal representatives in the action with Clark and others, as decided by the Supreme Court of the United States."

AND WHEREAS, the Secretary of the Interior has charged the General Land-Office with the execution of the said act; Now therefore be it known, That on the presentation and surrender of this Warrant at any Land-Office of the United States, the said William Kinney and Thomas J. Michie, as Executors of Robert Porterfield, deceased, or their assignees—should any assignment from them as such Executors, under the provisions of the Will of the said Robert Porterfield, as directed by the act in question, be duly endorsed hereon—are hereby authorized to enter Forty Acres of any of the public lands which have been surveyed, and not otherwise appropriated at the time of such location, within any of the States or Territories of the United States, where the

* See No. 271.

minimum price for the same shall not exceed the sum of one dollar and twenty-five cents per acre, within the limits of the district of lands surveyed at the Land-Office where this Certificate may be surrendered.

Given under my hand and the Seal of the Department of the Interior, this _____ day of _____ A. D., 1860, and of the Independence of the United States the Eighty-fourth.

_____, *Secretary of the Interior.*
_____, *Commissioner General Land-Office.*

NOTE.—This Warrant may be located upon "UNOFFERED LANDS," and is ASSIGNABLE in the manner and form prescribed by the "Rules and Regulations" of this Office, under the act of March 3d, 1855.

The Register and Receiver of the Land-Office for the Land District in which this Warrant may be surrendered, will require the locators to sign an application, designating the particular Tracts selected in satisfaction thereof, and will duly attest the same; (certifying thereunder, that said Tract has been SURVEYED, AND IS NOT OTHERWISE APPROPRIATED;) and further, will attach AN ADDENDUM to the usual monthly abstract, of the selections and locations that may be made under this special act; and will return the Warrant to this Office for Patent.

These officers are entitled to their REGULAR FEES as prescribed by GENERAL LAWS. _____, *Commissioner General Land-Office.*

No. 637.

INSTRUCTIONS FOR LOCATING VALENTINE SCRIP.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
June 17, 1874.

TO REGISTERS AND RECEIVERS OF U. S. LAND-OFFICES.

GENTLEMEN:—In receiving applications to file, or locate, scrip issued by this office to Thomas B. Valentine, under the act of April 5, 1872, (Part II., No. 50,) you will be governed by the following instructions:

First. You will observe that, by the terms of the said act, and by the face of the scrip itself, that scrip is applicable to any "unoccupied and unappropriated public lands of the United States not mineral."

Second. The scrip may be located by the said Thomas B. Valentine or his legal assignees. (Form of assignment annexed.)

Third. The scrip is in forty-acre pieces, and is required to be located in the same manner as are military bounty land warrants, viz: Each piece must apply to a separate forty-acre subdivision, be accompanied by a separate application, and receive a separate register's and receiver's number.

Fourth. When an *immaterial excess* of area occurs in the subdivision sought to be located, the applicant will be required to pay for such excess in cash, at the Government price per acre, and the receiver will issue an excess receipt therefor, and account for the same as in similar cases of military bounty land locations. The register, in such cases, will append to the application his official statement, in red ink, that _____ acres (the excess) of said tract have been paid for, per Receiver's Receipt No. —.

Fifth. When application is made to file the said scrip upon unsurveyed land, a description by metes and bounds, together with a map or diagram of the tract applied for must be filed with the application. *In such cases, the scrip, with the accompanying papers as aforesaid, will be retained in the careful custody of the receiver until such time as the township embracing the tract applied for shall be surveyed.*

Within three months from the date of the receipt by the register of the official plat of survey of the said township, the party who may have filed the said scrip will be required to appear before you and designate upon the official plat the specific subdivision embraced in the said filing, whereupon the location thereof will be consummated; and thereafter all the papers in the case will be transmitted to this Office with your regular monthly returns. Should the applicant fail to so appear within the specified three months, you will immediately thereafter proceed to adjust the filing yourselves, as nearly as may be practicable, by the map and description filed by the party, and forward the same to this Office as aforesaid. If you are unable to determine the locality of the land in the public surveys, you will report the fact, forwarding therewith all the papers in the case for my action. *After a piece of the said scrip shall have been filed upon an unsurveyed tract, you will in no event allow the party to amend the description or diagram, or to reclaim the scrip, without express instructions from this Office.*

Sixth. The records of your proceedings in locating the said scrip, and your official returns of the same, are to be kept entirely separate and distinct from other sales, entries, and locations of public lands. At the close of each month you will make a separate official return of the scrip located during that month, with all the papers on file connected with such location, accompanied by a monthly abstract, as in the case of military warrant locations. You will also, at the end of each month, report, in an abstract similar to those used in cases of pre-emption filings, the numbers of such scrip as may have been filed during that month upon unsurveyed lands, together with the names of the parties filing the same, and the precise date of filing each piece.

Seventh. The fees of the register and receiver for the filing and location of the said scrip will be fifty cents to each officer on each piece of scrip filed, and the same amount on each piece located.

Eighth. The applications, certificates, and abstracts provided for military bounty land warrant locations will be used for this scrip, care being taken to first correct, in writing, the style and title and date of act governing the same. For reports of filings of the same, the abstracts provided for declaratory statements under the pre-emption laws will be used, with the necessary corrections in writing.

Respectfully, W. W. CURTIS, *Acting Commissioner.*

DEPARTMENT OF THE INTERIOR, June 26, 1874.

Approved: C. DELANO, *Secretary.*

FORM OF ASSIGNMENT.

FOR AND IN CONSIDERATION of the sum of _____ dollars, to me in hand paid, I, THOMAS B. VALENTINE, of _____, in the county of _____ and State of _____, to whom the within Special Certificate of Location E, No. —, was issued, do hereby sell and assign unto _____, of _____, county, and State of _____, and to his heirs and assigns forever, the said Special Certificate of Location E, No. —, and I do hereby authorize him to locate the same and receive a patent for the land so located.

Witness my hand and seal this _____ day of _____, A. D, 187—.

(Two witnesses.)

STATE OF _____ } ss:
COUNTY OF _____ }

On this _____ day of _____, A. D. eighteen hundred and seventy _____, before me, _____, a notary public in and for said county, personally appeared THOMAS B. VALENTINE, known to me to be the person whose name is subscribed to the within instrument, and he duly acknowledged to me that he executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the _____ of _____, the _____ day and year in this certificate first above written.

No. 638.

FORM OF VALENTINE SCRIP.

Claim of Thomas B. Valentine.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., _____, 187—.

WHEREAS, by act of Congress approved April 5, 1872, entitled "An act for the relief of Thomas B. Valentine," it was enacted—"That the ninth circuit court of the United States, of California, be and hereby is authorized and required to hear, and decide upon the merits, the claim of Thomas B. Valentine, claiming title under a Mexican grant to Juan Miranda, to a place called the Rancho Arroyo de San Antonio, situate in the county of Sonoma and State of California, in the same manner, and with the same jurisdiction, as if the claim to the said tract of land had been duly presented to the board of land commissioners under the provisions of the act entitled 'An act to ascertain and settle the private land claims in the State of California,' approved March third, eighteen hundred and fifty-one, and an appeal had been duly taken from their decision to the district court of California by the said Thomas B. Valentine.

"That on the said hearing and testimony heretofore taken before the said board of commissioners in relation to said claim on behalf of the said claimant, or of the United States, may be read, subject to all just exceptions to its competency; and additional testimony, on either part, may be taken, under the order and direction of said circuit court, as to the validity and extent of said claim.

"That an appeal shall be taken from the final decision and decree of the said circuit court to the Supreme Court of the United States by either party, in accordance with the provisions of the tenth section of said act of March third, eighteen hundred and fifty-one, within six months after the rendition of such final decision, and a decree under the provisions of this act, in favor of said claim, shall not affect any adverse right or title to the lands described in said decree; but in lieu thereof, the claimant, or his legal representatives, may select, and shall be allowed patents for an equal quantity of the unoccupied and unappropriated public lands of the United States, not mineral, and in tracts not less than the subdivisions provided for in the United States land laws, and, if unsurveyed when taken, to conform, when surveyed, to

the general system of United States land surveys; and the Commissioner of the General Land-Office, under the direction of the Secretary of the Interior, shall be authorized to issue scrip, in legal subdivisions, to the said Valentine, or his legal representatives, in accordance with the provisions of this act: *Provided*, That no decree in favor of said Valentine shall be executed nor be of any force or effect against any person or persons; nor shall land-scrip or patents issue as hereinbefore provided, unless the said Valentine shall first execute and deliver to the Commissioner of the General Land-Office a deed conveying to the United States all his right, title, and interest to the lands covered by said Miranda grant."

And whereas the said Thomas B. Valentine did, on the 5th day of June, A. D., 1872, pursuant to the act aforesaid, file in the said circuit court of the United States, a petition praying the said court to hear and decide upon the merits of his claim to the said Rancho Arroyo de San Antonio, whereupon the said court, on the 6th day of January, A. D., 1873, in the cause entitled *Thomas B. Valentine v. United States*, rendered the following decree:

In this case, on hearing the proofs and allegations, it is ordered, adjudged, and decreed that the said claim of the petitioner is valid, and that the same be and hereby is confirmed; but this decree and confirmation are hereby made subject to the restrictions and limitations prescribed in the act of Congress entitled "An act for the relief of Thomas B. Valentine," approved April 5, 1872.

The land of which confirmation is made is the same which was granted by Manuel Micheltorena, in the name of the Mexican government, to Juan Miranda, on the 8th day of October, 1844, and on which he resided in his lifetime, and is known by the name of Rancho Arroyo de San Antonio, and bounded by the laguna and arroyo of the same name, and the pass and estero of Petaluma; and is in extent three square leagues, if that quantity is to be found within the exterior boundaries, and no more; and if a less quantity is included in said boundaries, then said lesser quantity is confirmed.

LORENZO SAWYER, *Circuit Judge*.

Which said decree was affirmed by the Supreme Court of the United States on the 6th day of January, A. D., 1874, as follows:

UNITED STATES OF AMERICA, ss:

The President of the United States of America to the honorable [L. s.] the judges of the circuit court of the United States for the district of California, greeting:

WHEREAS, lately, in the circuit court of the United States for the district of California, before you, or some of you, in a cause between Thomas B. Valentine, complainant, and the United States, defendant, wherein the decree of the said circuit court, entered in said cause on the 6th day of January, A. D. 1873, is in the following words, viz: "In this case, on hearing the proofs and allegations, it is ordered, adjudged, and decreed that the said claim of the petitioner is valid, and that the same be, and hereby is, confirmed; but this decree and confirmation are hereby made subject to the restrictions and limitations prescribed in the act of Congress entitled 'An act for the relief of Thomas B. Valentine,' approved April 5, 1872. The land of which confirmation is made is the same which was granted by Manuel Micheltorena, in the name of the Mexican government, to Juan Miranda, on the 8th day of October, 1844, and on which he resided in his lifetime, and is known by the name

of Rancho Arroyo de San Antonio, and bounded by the laguna and arroyo of the same name, and the pass and estero of Petaluma, and is in extent three square leagues, if that quantity is to be found within the exterior boundaries, and no more; and if a less quantity is included in said boundaries, then said less quantity is confirmed," as by the inspection of the transcript of the record of the said circuit court, which was brought into the Supreme Court of the United States by virtue of an appeal, agreeably to the act of Congress, in such case made and provided, fully and at large appears. And whereas, in the present term of October, in the year of our Lord one thousand eight hundred and seventy-three, the said cause came on to be heard before the said Supreme Court, on the said transcript of record, and on motion of Mr. Assistant Attorney General Goforth, of counsel for the appellants, it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, affirmed.

6th January, 1874.

You therefore, are hereby commanded that such proceedings be had in said cause as, as according to right and justice, and the laws of the United States, ought to be had, the said appeal notwithstanding.

Witness the honorable Nathan Clifford, senior associate justice of said Supreme Court, the seventh day of January, in the year of our Lord one thousand eight hundred and seventy-four.

D. W. MIDDLETON,

Clerk of the Supreme Court of the United States.

And whereas, it appears that the tract of land described in the said decree, affirmed as aforesaid, contains an area of 13,316 acres, or three square leagues of land;

And whereas, pursuant to the aforesaid act of Congress, there has been deposited in the General Land-Office a deed bearing date December 17, A. D. 1873, by which the said Thomas B. Valentine and Maria A., his wife, conveyed to the United States all their right, title, or interest in the said Rancho Arroyo de San Antonio, above described, which said deed was recorded on the 22d day of January, A. D. 1874, in the office of the recorder of deeds for the county of Sonoma, State of California:

Now, therefore, be it known, that on surrender of this certificate to the register of any land-office of the United States, the said Thomas B. Valentine, or his legal representatives, shall be entitled to enter, in part satisfaction of said claim, the quantity of _____ acres of land upon any of the "unoccupied and unappropriated public lands of the United States, not mineral, and in tracts not less than the subdivisions provided for in the United States land laws, and if unsurveyed when taken, to conform, when surveyed, to the general system of the United States land surveys."

By direction of the Secretary of the Interior:

_____, *Commissioner.*

IV. TESTIMONY AND DEPOSITIONS.

No. 639.

INSTRUCTIONS RELATIVE TO TESTIMONY.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., August 18, 1874.

REGISTER AND RECEIVER, *Detroit, Minn.*

GENTLEMEN:— * * * It is noticeable in this case that the register and receiver sustained objections to a number of questions, and the witnesses were not allowed to answer the same. You will be particular hereafter when an objection is made to note the same, giving the grounds of objection fully, and then receive the answer. It will be considered in connection with the objection. In no case is it your duty to decline to receive an answer.

It is important that said mistake does not occur again.

Respectfully, S. S. BURDETT, *Commissioner.*

No. 640.

D. S. DANA.

In cases of contest, depositions of certain witnesses may be taken, with notice to the opposing party near their place of residence.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., July 29, 1874.

REGISTER AND RECEIVER, *Salt Lake City, Utah.*

GENTLEMEN:—I am in receipt of your application, by D. S. Dana, attorney for Margaret A. Herbel, asking that she may be allowed to take the depositions of certain witnesses on matter concerning her contest with one Wm. Thompson for E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ and S.W. $\frac{1}{4}$ N. E. $\frac{1}{4}$ 20, 7 N., 3 E., at Provo, in your territory, alleging as a reason for this request that it is more than fifty miles from the disputed tract to the local office, and that some of her witnesses are old and infirm, and unable to travel that distance. It thus appearing that it would work a great disadvantage to Mrs. Herbel were she not allowed to take these depositions, you are hereby instructed to notify her that she will be allowed to take them upon due notice to Wm. Thompson, or his representative, of the time and place of such taking. Upon the receipt of the depositions you will connect them with the papers in the case, and consider them when you render your opinion in the premises.

Respectfully, S. S. BURDETT, *Commissioner.*

V. REGULATIONS IN REFERENCE TO APPEALS.

No. 641.

GENERAL LAND OFFICE,
January 24, 1859.

The following regulations are established by authority of the Secretary of the Interior, communicated to this office in his letter of 21st

instant, in relation to appeals to his Department proper, and will be observed and enforced from and after this date:

1st. In every case when an appeal may hereafter be taken from the decision of this office, the party appealing or his attorney will be required to notify the office in writing of the points of exception to its action.

2d. An opportunity will also be afforded to other parties interested in the case to be heard, if desired, and a reasonable time will be allowed.

3d. All parties to such appeals will be required to file in this office all arguments and documents of whatever character, before the cases are submitted to the Department, in order that they may be referred to and considered in our report to the Secretary, if deemed expedient.

4th. In submitting cases on appeal, particular care will be taken to state the question or questions at issue and the grounds of appeal, and the action of the Department will be confined to those questions alone, unless sufficient cause should appear for looking beyond them.

THOS. A. HENDRICKS,

Commissioner of the General Land-Office.

May 4, 1871, the Secretary directed compliance with the above instructions, especially the third paragraph.

No. 642.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Feb'y 11, 1871.

SIR:—In order to facilitate the disposal of appeal cases from your office I have to request that in each case hereafter you will furnish a brief of the evidence, a full and clear synopsis of the contents of the papers, and a citation of the laws bearing upon the questions at issue.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Commissioner General Land-Office.

No. 643.

OVERMAN MINING CO. v. DARDANELLES MINING CO.

An appeal to the Commissioner from the decision of the local officers brings up the entire case and gives the Commissioner jurisdiction thereof, and when the appeal has been dismissed the appellant cannot thereafter appeal from any order made prior to the one first appealed from.

Decision by the Secretary, July 16, 1873. (See Copp's Mining Laws.)

No. 644.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

Washington, D. C., July 17, 1871.

REGISTER AND RECEIVER:—The attention of this Office has been called to arbitrary decisions of local land-officers touching questions con-

nected with the disposition of the public lands, and involving the right and interests of parties who are left to suppose that in case of a decision adverse to their interests they must either submit to such decision of the local officers or appeal directly to this Office, and hence ex-parte statements are frequently sent up, causing delay in the attainment of the object sought, and much needless correspondence.

In view of this irregularity of proceeding you will in future, upon deciding any legitimate question which may, in the course of your official action, come before you, be careful to inform the aggrieved party that he has a right to appeal from your decision to this Office; and in case he should desire the matter sent up, let his appeal be made in writing and placed in your hands, when you will make a full report of the case, with your joint opinion thereon, and transmit the same to this Office for consideration and decision.

When the decision of this Office shall be communicated to the party through you, if he should desire to appeal to the Secretary of the Interior, allow him to do so through you, giving sixty days' time for that purpose.

In case of such appeal all further proceedings will be stayed until the appeal has been determined and you notified thereof through this Office. Please to acknowledge the reception of this circular.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 645.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 5, 1875.

REGISTERS AND RECEIVERS, UNITED STATES LAND-OFFICES.

GENTLEMEN:—To facilitate the settlement of contests, and the final adjudication of cases in which hearings have been held before you, and which have been decided by this Office, you are directed to report promptly, every week, the status of all cases having been so decided, where the time prescribed in the notice has elapsed.

You will report the time and manner of service of notice on the parties in contest, and whether or not said parties have filed a notice of appeal to the Secretary of the Interior.

You will, in like manner, at the expiration of the time allowed by this Office, report the filing of all arguments in cases awaiting transmission to the appellate authority.

You are directed to report each case separately, giving the names of the contestants, the description of the tracts, and the date of the decision, or other letter of this Office, in order that your reports may be properly docketed and placed with the cases to which they pertain.

In every case you will give the initial letter, indicating the division of this Office which has conducted the correspondence in such cases.

Strict compliance with these instructions is requested.

S. S. BURDETT, *Commissioner*.

instant, in relation to appeals to his Department proper, and will be observed and enforced from and after this date:

1st. In every case when an appeal may hereafter be taken from the decision of this office, the party appealing or his attorney will be required to notify the office in writing of the points of exception to its action.

2d. An opportunity will also be afforded to other parties interested in the case to be heard, if desired, and a reasonable time will be allowed.

3d. All parties to such appeals will be required to file in this office all arguments and documents of whatever character, before the cases are submitted to the Department, in order that they may be referred to and considered in our report to the Secretary, if deemed expedient.

4th. In submitting cases on appeal, particular care will be taken to state the question or questions at issue and the grounds of appeal, and the action of the Department will be confined to those questions *alone*, unless sufficient cause should appear for looking beyond them.

THOS. A. HENDRICKS,

Commissioner of the General Land-Office.

May 4, 1871, the Secretary directed compliance with the above instructions, especially the third paragraph.

No. 642.

DEPARTMENT OF THE INTERIOR,

Washington, D. C., Feb'y 11, 1871.

SIR:—In order to facilitate the disposal of appeal cases from your office I have to request that in each case hereafter you will furnish a brief of the evidence, a full and clear synopsis of the contents of the papers, and a citation of the laws bearing upon the questions at issue.

I am, sir, very respectfully, your obedient servant,

C. DELANO, *Secretary.*

Commissioner General Land-Office.

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An appeal to the Commissioner from the decision of the local officers brings up the entire case and gives the Commissioner jurisdiction thereof, and when the appeal has been dismissed the appellant cannot thereafter appeal from any order made prior to the one first appealed from.

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nected with the disposition of the public lands, and involving the right and interests of parties who are left to suppose that in case of a decision adverse to their interests they must either submit to such decision of the local officers or appeal directly to this Office, and hence ex-parte statements are frequently sent up, causing delay in the attainment of the object sought, and much needless correspondence.

In view of this irregularity of proceeding you will in future, upon deciding any legitimate question which may, in the course of your official action, come before you, be careful to inform the aggrieved party that he has a right to appeal from your decision to this Office; and in case he should desire the matter sent up, let his appeal be made in writing and placed in your hands, when you will make a full report of the case, with your joint opinion thereon, and transmit the same to this Office for consideration and decision.

When the decision of this Office shall be communicated to the party through you, if he should desire to appeal to the Secretary of the Interior, allow him to do so through you, giving sixty days' time for that purpose.

In case of such appeal all further proceedings will be stayed until the appeal has been determined and you notified thereof through this Office. Please to acknowledge the reception of this circular.

Very respectfully,

WILLIS DRUMMOND, *Commissioner*.

No. 645.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., February 5, 1875.

REGISTERS AND RECEIVERS, UNITED STATES LAND-OFFICES.

GENTLEMEN:—To facilitate the settlement of contests, and the final adjudication of cases in which hearings have been held before you, and which have been decided by this Office, you are directed to report promptly, every week, the status of all cases having been so decided, where the time prescribed in the notice has elapsed.

You will report the time and manner of service of notice on the parties in contest, and whether or not said parties have filed a notice of appeal to the Secretary of the Interior.

You will, in like manner, at the expiration of the time allowed by this Office, report the filing of all arguments in cases awaiting transmission to the appellate authority.

You are directed to report each case separately, giving the names of the contestants, the description of the tracts, and the date of the decision, or other letter of this Office, in order that your reports may be properly docketed and placed with the cases to which they pertain.

In every case you will give the initial letter, indicating the division of this Office which has conducted the correspondence in such cases.

Strict compliance with these instructions is requested.

S. S. BURDETT, *Commissioner*.

No. 646.

JOHN BEEDON.*

The decision was made more than 8½ years before the appeal therefrom was filed in the Interior Department.

Held—That the case should be dismissed for want of timely prosecution.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., 23d Oct., 1872.

SIR:—I have considered the case of John Beedon, pre-emption claimant to lot No. 2 of Sec. 33, and lot No. 5 of Sec. 34, T. 59 N., R. 28 W., Michigan, being a portion of the land known as the Fort Wilkins Reservation, and being an appeal from the decision of Commissioner Edmunds, one of your predecessors, made on the 3d day of February, 1864.

The notice of appeal was irregularly given, but waiving that, the appeal itself was not filed in this department until the 26th of September ultimo, being a period of more than eight years and a half after the decision was made.

I think the appeal has not been presented with due diligence, and that it would be against sound policy to interfere with the case after so great a lapse of time.

I dismiss the same for want of timely prosecution.

The papers are herewith returned.

Very respectfully, your obedient servant,

B. R. COWEN, *Acting Secretary.*

HON. WILLIS DRUMMOND, *Commissioner General Land-Office.*

VI. QUESTION OF FRAUD.

The following three decisions show—

1st. The old rule of the General Land-Office, that a stranger in interest at the date of a pre-emption entry will not subsequently be allowed to attack such entry on the ground of fraud.

2d. Modification of this rule, showing under what circumstances the Commissioner may investigate the question of fraud as to such entry after the same has been allowed.

3d. Practice of the General Land-Office under said modification.

W. O. GRUWELL.

No. 647.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Jan. 14, 1873.

SIR:—I have considered the appeal from your decision of Aug. 14, 1872, in the matter of the application of S. W. Gruwell to file as a pre-emptor on lots 1 and 2, section 8, T. 8 S., R. 1. W., unoffered land, and with this object in view, for the cancellation of the prior cash entry of W. O. Gruwell, made Oct. 4, 1871.

W. O. Gruwell settled on the tracts in controversy Oct. 25, 1866, filed declaratory statement Jan. 19, 1867, and Oct. 4, 1871, upon due

*See *Toll v. Pettingill*, *Copp's Land Owner*, Vol. II, p. 83.

proof and the usual affidavit, entered the land and paid for the same with cash.

S. W. Gruwell, July 1, 1872, applied at the local office to file on the land as a pre-emptor, alleging settlement, June, 1872, and alleging further, that the prior entry of W. O. Gruwell was consummated by fraud; that shortly after settlement the said W. O. Gruwell mortgaged the land to one W. C. Overfelt; that this mortgage was outstanding at the time of entry; that shortly after entry such mortgage was foreclosed by decree of court; that a sale of the premises under such decree was made by the sheriff, and that the land was purchased at such sale by said W. C. Overfelt. Exhibits attached to this application show these allegations to be true.

You direct upon this showing, that the entry of W. O. Gruwell be cancelled, and from this decision an appeal has been taken to the Department by W. C. Overfelt.

Although the entry in question was undoubtedly consummated by fraud, and although there can be no question that by taking the affidavit prescribed W. O. Gruwell thereby rendered himself liable to indictment for perjury, still, I am nevertheless of the opinion that this case comes within the well-established rule of your Office and the Department, that an entry once made upon satisfactory proof to the officers having a proper jurisdiction of the subject-matter, cannot be subsequently attacked on the ground of fraud by a stranger in interest at the date of entry.

In the case of *Young v. Dennis*, Jan. 15, 1862, the Secretary of the Interior, in his decision on an appeal from your Office, says: "After an entry has once been permitted by the Government, no subsequent settler can be allowed to impeach the entry on the ground of fraud." This ruling was followed by the Department in the cases of E. B. Hyde, T. S. Shaw, and S. I. Mickley, Nov. 25, 1871, and again, affirming your decision, in the case of *James v. Bonesteel*, Jan. 6, 1872. In the latter case, the Assistant Attorney-General in his opinion says: "A claimant who, having made a settlement, conforms to all the requirements of law to the satisfaction of the officers having a proper jurisdiction of the claim, and who is allowed to make an entry, cannot, in my opinion, be disturbed on subsequent allegations of fraud by a stranger in interest at the time of sale."

S. W. Gruwell was a stranger in interest at the time of sale, and under the rule cannot be allowed to attack the entry in question.

The patent, when issued, can be set aside by proceedings in a court of competent jurisdiction on the ground of fraud, and, as before stated, it is clear that W. O. Gruwell has made himself liable to indictment for perjury.

I reverse your decision, and return herewith the papers transmitted with your letter of Dec. 12, 1872.

Very respectfully, B. R. COWEN, *Acting Secretary*.
HON. WILLIS DRUMMOND, *Commissioner General Land-Office*.

No. 648.

ALONZO C. BUNTON.

DEPARTMENT OF THE INTERIOR,
Washington, D. C., Oct. 20, 1873.

SIR:—I have considered the appeal taken by Alonzo C. Bunton from your decision of May 6 last, ordering a rehearing for fraud in his pre-

emption cash entry made July 1, 1872, of E. $\frac{1}{2}$ S. W. $\frac{1}{4}$, section 34, T. 93, R. 47, Sioux City district, Iowa.

This case has previously been before the Department, then under the title of *Roderick Finlayson v. said Bunton*, and by its decision of Jan. 13, last, the contest for fraud on charges by Finlayson was dismissed, on the ground that he, being a stranger in interest, could not be allowed to allege fraud against the completed entry of Bunton. You were, however, informed that if you had "record evidence on file in your Office, not derived in any way from strangers in interest at the date of entry, tending to show fraud in such entry, you have jurisdiction and power to order an investigation before the local officers, to be strictly and carefully confined to the particular point or points in which such record evidence in your Office indicates or suggests fraud in the entry."

You thereupon, in a letter of May 6, 1873, recited that the records of your Office showed that one Alonzo C. Bunton was plaintiff in the case of *Alonzo C. Bunton v. Mary Jane Vincent*, involving the right of the latter to a certain described tract of land in the *West Point land district, Nebraska*; that he therein made affidavits to having settled on said land in August, 1870, and that the case was pending before your Office and the Department until July 31, 1872, when it was finally decided in favor of said Vincent. You deemed this evidence of fraud in the pre-emption case of Alonzo C. Bunton for the tracts in issue in this case in the *Sioux City district, Iowa*, (D. S. alleging settlement Oct. 23, 1871, and proof and payment made July 1, 1872,) and you directed a suspension of the entry in Iowa, and an investigation as to the identity of the Bunton in Nebraska with the Bunton in Iowa.

You have sent up nothing but the decisions in the case and the arguments on appeal, and I am left in ignorance as to what may have led you to think the two identical. In your letter ordering the investigation, you do not assert any reason for your conclusion except the identity of names. This is, under the circumstances of this case, in my opinion insufficient.

But were the identity established, the fact of having contested an entry in Nebraska in 1870 and 1871, after settlement on land there, does not establish fraud in subsequent pre-emption settlement, filing, and entry made in Iowa in 1871 and 1872. It certainly is not sufficient to warrant the disturbing of completed *prima facie bona fide* entry.

Before I conclude this communication, I desire to modify my letter of Jan. 13, 1873, so as to allow you, in all cases where you have evidence tending to show fraud in an entry, to order an investigation before the local offices, which shall inquire into the specific fraud embraced in such evidence. This modification, however, is not to be so construed as to justify a stranger or party without interest in making an allegation of fraud into which you must inquire. My purpose is to prevent you from being limited to "record" evidence when inquiring into such fraud, as you seem to be by the departmental letter herein referred to.

I reverse your decision ordering a reinvestigation, and return the papers in the case transmitted with your letter of July 5 last.

Very respectfully,

C. DELANO, *Secretary.*

HON. W. DRUMMOND, *Commissioner General Land-Office.*

No. 649.

W O. GRUWELL.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
Washington, D. C., Feb. 24, 1874.

REGISTER AND RECEIVER, *San Francisco, Cal.:*

GENTLEMEN:—I have examined the cash entry 3,374, by Wm. O. Gruwell, lots 1 and 2, sec. 8, 8 S., 1 W., made Oct. 4, 1871, and find as follows:

The records show that Gruwell filed D. S. 2,392, January 19, 1867, alleging settlement October 25, 1866, and on the 4th of October, 1871, made proof and payment for the land as above recited. The entry was examined, and, upon the proof as then offered, was approved May 17, 1872, for patent. Pending the issue of the patent, on July 12, 1872, the local officers forwarded an application of S. W. Gruwell, asking that he be allowed to file on the land, alleging settlement June 29, 1872, and that a rehearing might be ordered in the matter of the cash entry of Wm. O. Gruwell, alleging fraud on his part. In support of this allegation of fraud, he submits a certified copy of a mortgage made by the said Wm. O. Gruwell, dated November 6, 1866; also a certified copy of the certificate of sheriff's sale, in which mention is made of the decree of court foreclosing the said mortgage. This sale by the sheriff was made May 29, 1872, subsequent to the entry of Gruwell. August 14, 1872, you were notified that the papers forwarded with your letter of 13th July prior had been considered, and were deemed sufficient, without ordering an investigation, to show fraud on the part of the pre-emptor, and his entry was held for cancellation. December 12, 1872, the papers were transmitted to the honorable Secretary of the Interior, on the appeal taken by W. C. Overfelt, the purchaser of the land at the sheriff's sale. January 14, 1873, the Assistant Secretary of the Interior returned the papers in the case and reversed my decision on the ground that this case came within the well-established rule "that an entry once made upon satisfactory proof to the officers having proper jurisdiction of the subject-matter cannot be subsequently attacked on the ground of fraud by a stranger in interest at date of entry."

Subsequent to this action, under date of October 20, 1873, the honorable Secretary of the Interior modified his former ruling in cases of this character, and instructed this Office that in "all cases where you have evidence tending to show fraud in an entry, to order an investigation before the local officers, which shall inquire into the specific fraud embraced in such evidence. This modification, however, is not to be so construed as to justify a stranger or a party without interest in making an allegation of fraud into which you must inquire. My purpose is to prevent you from being limited to *record* evidence when inquiring into such fraud."

In view of these instructions of the honorable Secretary, and of the evidence on file in this Office tending to show fraud on the part of the said Wm. O. Gruwell, I have to instruct you to make an official investigation of the matter, and for your guidance I enclose the certified copies hereinbefore mentioned. At this investigation you will inquire specifically into the question of the mortgage, the date of making the foreclosure, and the sale under the decree of court foreclosing the same. This investigation is ordered to determine the validity of said entry. No stranger must be allowed to contest the entry or become a party to

the investigation. The validity of the mortgage and the identity of the land and parties are necessary to be established.

You will notify the pre-emptor and the present owner of the premises of a day when the matter will be investigated, and allow them to submit any proper defence.

Proceed with all reasonable expedition to carry out these instructions, and when done, forward the papers with your joint opinion on the same to this office, referring to this as G by date.

Respectfully, WILLIS DRUMMOND, *Commissioner*.

VII. CORRECTION OF ERRORS AND REPAYMENT.

No. 650.

CIRCULAR NO 17.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
April 30, 1867.

GENTLEMEN:—Numerous applications to correct errors in entries of the public lands having been forwarded to this Office without being properly supported by testimony, it is deemed advisable to collect and present in one view all the legislative enactments, of a general character, upon the subject, with such explanatory remarks as are deemed necessary.

The acts authorizing corrections of errors in entries are the following, viz:—

An Act providing for the correction of errors in making entries of land at the land-offices.

[SEC. 1.] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That in every case of a purchaser of public lands, at private sale, having entered, at the land-office, a tract different from that he intended to purchase, and being desirous of having the error in his entry corrected, he shall make his application, for that purpose, to the register of the land-office; and if it shall appear, from testimony satisfactory to the register and receiver of public moneys, that an error in the entry has been made, and that the same was occasioned by original incorrect marks made by the surveyor, or by the obliteration or change of the original marks and numbers at corners of the tract of land, or that it has in any otherwise arisen from mistake or error of the surveyor or officers of the land-office, the said register and receiver of public moneys shall report the case, with the testimony, and their opinion thereon, to the Secretary of the Treasury, who shall have power to direct, if in his opinion it shall be proper, that the purchaser shall be at liberty to withdraw the entry so erroneously made, and that the moneys which had been paid shall be applied in the purchase of other lands in the same district, or credited in the payment for other lands which shall have been purchased at the same office.

Approved March 3, 1819.

An act supplementary to an act approved on the third day of March, one thousand eight hundred and nineteen, entitled "An act providing for the correction of errors in making entries of land at the land-offices."

[SEC. 1.] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That where any mistake, in relation to the correct numbers of any tract of land, not exceeding in quantity one-half section, may have been heretofore made by any purchaser of the public lands of the United States at private sale, and where one or more payments shall have been made by the person making the entry, on any tract entered by mistake, and where such payment has not been forfeited, previously to the passing of this act, for a failure to complete the payments on such tract; and where the purchaser or purchasers may not, in relation to said tract, have in any way taken advantage of the provisions of the act of the second of March, eighteen hundred and twenty-one, entitled "An act for the relief of the purchasers of the public lands prior to the first day of July, eighteen hundred and twenty," or of the act supplementary thereto, or the act continuing in force said supplementary act; and where the person or persons making the purchase has not in any way transferred his, her, or their right to the certificate of purchase, or the tract so purchased, and where no patent shall have issued for the tract so erroneously purchased; and, also, in all cases of an entry hereafter made of a tract of land not intended to be entered, by a mistake of the true numbers of the tract intended to be entered, where the tract thus erroneously entered does not in quantity exceed one-half section; and where the certificate of the original purchaser or purchasers has not been assigned, or the right of the original purchaser or purchasers in any way transferred, or the patent issued for the tract erroneously entered, the purchaser or purchasers, or in case of his, her, or their death, the legal representatives, (not being assignees or transferees,) may, either in the cases of entry before or after the passing of this act, and in any case coming within its provisions, file his, her, or their own affidavit or affidavits, with such additional evidence as can be procured, showing the mistake of the numbers of the tract intended to be entered, and that every reasonable precaution and exertion had been used to avoid the error, with the register and receiver of the land district within which such tract of land is situated, who shall transmit the evidence submitted to them in each case, together with their written opinion or opinions, both as to [the] existence of the mistake and the credibility of each person testifying thereto, to the Commissioner of the General Land Office, who, if he be entirely satisfied [that] the mistake has been made, and that every reasonable precaution and exertion had been made to avoid it, shall be authorized to change the entry, and transfer the payment from the tract erroneously entered to that intended to be entered, if unsold, but if sold, to any other tract liable to entry: *Provided*, That the oath of the person or persons interested shall, in no case, be deemed sufficient, in the absence of other corroborating testimony, to authorize any such change of entry: *And provided, also*, That nothing herein contained shall affect the right of third persons.

SEC. 2. *And be it further enacted*, That either the register or receiver may administer all oaths to be made under the provisions of this act; and every person, knowingly, wilfully, and corruptly, swearing falsely on any oath administered to him or her under the provisions of this act, shall, on indictment and conviction for such offence, before any

court having competent jurisdiction to try the same, suffer the pains and penalties of wilful and corrupt perjury.

SEC. 3. *And be it further enacted,* That for every oath administered under the provisions of this act, the register and receiver shall be allowed the sum of twenty-five cents, and twenty-five cents for every hundred words of the evidence received and transmitted to the Commissioner of the General Land Office: to be paid by the party making the application for a change of entry.

Approved May 24, 1824.

An Act authorizing repayment for land erroneously sold by the United States.

[SEC. 1.] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That every person, or the legal representative of every person, who is, or may be, a purchaser of a tract of land from the United States, the purchase whereof is, or may be, void, by reason of a prior sale thereof by the United States, or by the confirmation, or other legal establishment of a prior British, French or Spanish grant thereof, or for want of title thereto in the United States from any other cause whatsoever, shall be entitled to repayment of any sum or sums of money paid for or on account of such tract of land, on making proof, to the satisfaction of the Secretary of the Treasury, that the same was erroneously sold, in the manner aforesaid, by the United States, who is hereby authorized and required to repay such sum or sums of money paid as aforesaid.

Approved January 12, 1825.

The foregoing act of 12th of January, 1825, was amended February 28, 1859, so as to "authorize the Secretary of the Interior, upon proof being made to his satisfaction that any tract of land has been erroneously sold by the United States, so that, from any cause whatever, the sale cannot be confirmed, to repay the purchaser or purchasers, or the legal representatives or assignees of the purchaser or purchasers thereof, the sum or sums of money which may have been paid therefor out of any money in the treasury not otherwise appropriated."

An Act supplementary to an act entitled "An act providing for the correction of errors in making entries of lands at the land-offices," passed March third, eighteen hundred and nineteen.

[SEC. 1.] *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That the provisions of the act entitled "An act providing for the correction of errors in making entries of lands at the land-offices," approved March third, one thousand eight hundred and nineteen, are hereby declared to extend to cases where patents have issued, or shall hereafter issue: upon condition that the party concerned shall surrender his or her patent to the Commissioner of the General Land-Office, with a relinquishment of title thereon, executed in a form to be prescribed by the Secretary of the Treasury.

Approved May 24, 1828.

These laws are plain and particular in their requirements, but few points being left to the elucidation of official instructions; and a careful

attention to them will be sufficient, in most cases, to ensure correctness in acting under them. It may not, however, be improper to remark—

1. That the act of 1819 is intended to afford relief to those persons whose errors in entries have been occasioned by the original incorrect marking by the surveyor, or by the subsequent change or obliteration of those marks, or else by any other error originating either with the surveyor or the land-officers. The application of the party should be made under oath, stating *particularly* the nature and cause of the error, and should be supported by the best corroborative testimony that can be procured. The case is then to be reported, with the testimony, *and your opinion thereon*, to this office, for the decision of the Secretary of the Treasury.

2. The supplementary act of May, 1824, extends the provisions of the act of 1819, so as to embrace cases where the error was *not* occasioned by any act of the surveyor or land officers; and provides, that in all cases of error in the entry of a tract of not more than one-half section, where the right of the original purchaser has not been assigned or in any way transferred, the party making the entry (or legal representatives, not being assignees or transferees) must file an affidavit, showing the nature and particular cause of the error, that every reasonable and proper precaution had been used to avoid the error, and that the land erroneously entered had not been transferred or otherwise encumbered, accompanied by the best corroborative testimony that can be procured; for you will observe by this act, that the oath of the party interested is not, of itself, sufficient. This evidence, with your opinions as to the existence of the mistake and the credibility of each person, will be forwarded for the decision of this office.

3. The acts of 1825 and 1859 provide for cases in which the sale of the land is invalid, in consequence of the want of title thereto in the United States from any cause whatsoever. Under these acts it has been decided, that if only *part* of the tract purchased is covered by the interfering claim, it is optional with the purchaser to relinquish the *whole* tract, or only the particular part interfered with. You will observe that, under this act, the money is to be refunded by and through the Secretary of the Treasury, and not by the receiver of public moneys. All applications to obtain the benefits of this act must be supported by your joint certificate, or that of the surveyor general, stating the nature of the particular interfering claim, or other circumstance rendering the sale invalid, and be accompanied by the patent, if any has been issued for the invalid sale, with a relinquishment of title in the following form:

"Whereas the act of Congress, passed on the 12th day of January, 1825, entitled 'An act authorizing repayment for land erroneously sold by the United States,' provides, that whenever the sale of a tract of land by the United States is void for want of title thereto in the United States, or from any other cause whatsoever, the money paid on the same shall be refunded by the Secretary of the Treasury. And whereas [a part, or the whole, as the case may be,] of the within described — section of land, is [included in the survey of the private claim of —, or, as the case may be.] Now know ye, that, for and in consideration of the sum of —, to me in hand paid, by the Secretary of the Treasury, I, the within named —, hereby assign, transfer, relinquish, and surrender to the United States, all my right, title, interest, and claim of, in, and to, the land described in the within patent. Given under my hand and seal this — of —, 183 .

Signed, sealed, and delivered, }
in presence of—

4. By the act of 24th May, 1828, the provisions of the act of 1819 are so extended as to embrace patented cases. The application for relief, in these cases, will have to be reported in the manner required in those not patented under the act of 1819, and be accompanied by a certificate that the patent is surrendered to you. If the correction of the entry is authorized, you will, before the money is refunded, or the change of entry noted on your books, require the party to execute, upon the patent, a relinquishment in the following form :

" Know all men by these presents, that, in pursuance of the provisions of the act of Congress, approved on the 24th day of May, 1828, entitled 'An act supplementary to an act entitled an act providing for the correction of errors in making entries of lands at the land-offices, passed March third, eighteen hundred and nineteen,' and in order that a patent may be granted to me for the — of section —, in township —, of range —, in lieu of the tract herein mentioned, I hereby surrender and relinquish unto the United States of America all my right, title, and interest of, in, and to, this patent, and to the land therein described. In testimony whereof, I have hereunto signed my name, an affixed my seal, this — day of —, 183 .

Signed, sealed, and delivered, }
in presence of—

At the foot of the above relinquishment, you will give a certificate, stating the precise cause of the error.

The act of March 3, 1853, provides for the correction of errors in the location of Military Bounty Land Warrants, and declares the provisions of the act of 3d of March, 1819, and the act of 24th of May, 1828, applicable to errors in such locations.

In all cases where patents have been issued, you will require a certificate from the county clerk, or other officer having charge of the books in which any conveyance, &c., of the land is required to be recorded to give it validity, stating that the records of such office do not exhibit any conveyance, or other incumbrance, of the land in question. The deed of relinquishment must be executed, acknowledged and recorded in accordance with the laws of the State in which the land is situated.

Whenever the change of entry is ordered, the certificate of purchase will be cancelled, and retained in this office.

The receiver will take a receipt from the purchaser for the purchase money of the tract erroneously entered, as if the same was refunded, which receipt will be a voucher to the receiver's credit, to be introduced into the proper monthly and quarterly accounts in the following, manner, viz :

" By this amount refunded to — —, agreeably to instructions from the General Land-Office, dated the — —, being the purchase money of the — quarter of section No. —, in township No. —, of range No. —, containing — acres, erroneously entered by him, and again charged to me, in the purchase of the — quarter of section No. —, in township No. —, of range No. —."

The receiver's receipt for the purchase money of the corrected entry is, as well as the register's certificate of purchase, to bear a new number. By this proceeding the corrected entry becomes an original transaction, and will appear as such in all your accounts.

I am, very respectfully, your obedient servant,

JOS. S. WILSON, *Commissioner.*

THE REGISTER AND RECEIVER OF THE LAND-OFFICE AT—

No. 651.

CIRCULAR IN RELATION TO REPAYMENT OF PURCHASE
MONEY AND CHANGES OF ENTRY.

GENERAL LAND OFFICE,

January 19, 1854.

GENTLEMEN:—The Circulars of the 31st August, 1830, 23d July, 1849, and 20th April, 1853, not embodying all that is now required of applicants to have the purchase money paid on illegal sales refunded, or to effect changes of entry, it is deemed advisable to issue these instructions in circular form:

1st. The duplicate receipt must be surrendered, and accompany the papers in all cases of application for refunding money submitted by you for the action of this Office. Where it has been lost or destroyed, the party applying must advertise it, and give notice of his intention to apply to have refunded the purchase money, which must be inserted weekly for six weeks, in some paper of extensive circulation in the vicinity of the land. A copy of this must be filed with you, having attached the affidavit of the publisher that it was inserted the requisite number of times.

2d. The applicant must make affidavit that he has not transferred or otherwise encumbered the title to the land. This affidavit may be taken before either of you officially, before a Notary Public using a seal, or a Justice of the Peace; in the last case, a certificate of magistracy must accompany it.

3d. Where a patent has been issued and delivered to the patentee, or where the title has become a matter of record, a deed of relinquishment reconveying the title to the United States should be made. This deed of relinquishment should be recorded, and a certificate should also be produced from the officer having charge of the books in which conveyances are required to be recorded, showing that said deed is so recorded, and that the records of his office do not exhibit any other conveyance or encumbrance of the title to the land.

4th. In cases of a change of entry, as the purchaser will reasonably wish to hold some evidence of his title until the issuing of the patent, he must first designate the tract he desires to enter, and effect the change of entry, and then across the face of the receipt issued upon the original entry, (which will be returned to you from this Office when the case has been decided,) the Receiver should note the facts of the case, to wit: that the entry has been changed from the tract paid for by said receipt to another, designating the latter, and the number of certificate issued thereon. The receipt must then be delivered to the party, to be surrendered when the patent is delivered to him.

JOHN WILSON, *Commissioner*.

REGISTER AND RECEIVER AT ———

NOTE.—The application is a brief request in writing for repayment, describing the tract or otherwise designating the entry with certainty. It must be signed by the party applying, and in all cases must be supported by the joint certificate of the Register and Receiver showing the reasons which render the entry invalid; and to this end papers should be sent through the Register and Receiver, to be by them transmitted to this Office.

VIII. CERTIFIED COPIES.

No. 652.

CIRCULAR.

DEPARTMENT OF THE INTERIOR,
GENERAL LAND OFFICE,
July 20, 1875.

Annexed are the laws (Revised Statutes of the United States) relative to the powers and duties of the General Land-Office in furnishing exemplifications of patents, papers, or plats on file or of record therein; of the legal force and effect of such certified copies, and the terms upon which the same can be procured.

With a view to give proper effect to said statutes, the following requirements are prescribed by direction of the Secretary of the Interior.

First.—All copies which may be required by parties interested will be furnished when the cost thereof shall *first* have been paid to the General Land-Office.

Second.—The applicant must address a communication to the Commissioner of the General Land-Office designating the tract or tracts in regard to which the verified transcripts are wanted, describing as accurately as possible the record, papers, or plats of which said transcripts are desired, and sending a sum of money quite sufficient to cover the cost according to the extent of the copying required; and should the sum sent to this Office be in excess of the actual legal cost, such excess will be returned to the applicant.

The following is the tariff established under the statute, section 461, for furnishing transcripts, to wit:

1st. Fifteen (15) cents for every hundred words in a transcript.

2d. Two (2) dollars for copy of township plat or diagram.

3d. One (1) dollar for the Commissioner's certificate of verification and official seal.

4th. One (1) dollar for appending such certificate and seal to official certificates of approval of assignment of bounty-land warrants or military bounty-land scrip.

Third.—Upon the receipt at the General Land-Office of the application particularly describing the record or paper of which transcripts are required, accompanied by the requisite amount to cover the expense, the same will be duly acknowledged, and the exemplifications promptly transmitted.

S. S. BURDETT, *Commissioner*.

IX. POSTING RETURNS AND FILING DUPLICATE RECEIPTS.

No. 653.

RULES FOR POSTING RETURNS FROM THE DISTRICT LAND OFFICES.

The sales and locations must be posted in the chronological and numerical order in which they are made, and, in posting returns for each consecutive month, the following order will be observed:

1st. *The Pre-emption Declarations* filed during the month are to be posted in lead pencil, in a fine, neat, legible hand, at the proper place in Tract Books, but between the ruled lines, so as not to be obliterated by, or to interfere with, the entry of the sale of the land upon the claim being consummated. The description of the tracts must be given, with name of the claimant, number of the declaration, date of settlement, and date when filed.

2d. *State selections, with red ink*, giving date of act, date of selection and number of list; also, when approved, noting that fact on the record and on the list.

3d. *Railroad selections, with red ink*, giving date of grant, date of selection and number of list; also note, when approved, the date of approval, on the list and on the record.

4th. *The cash sales* are next to be entered in a plain, neat hand, with *black ink*. Before posting these sales, however, the Register's and Receiver's returns must be carefully compared with each other to see they agree in every respect. When the sale is entered in Tract Books, the volume and page where posted must be entered in the column designed for that purpose on the Register's Abstract of Sales. The volume and page should also be noted on the back of each certificate of purchase, near the lower edge.

5th. *Military Warrant locations, and Agricultural College Scrip locations*, are next to be posted in *red ink*; and in all cases the description of the land, number of the warrant or scrip, and date of location, must be given, with the name of the locator, the date of the act under which the warrant or scrip was issued, and Register's and Receiver's number, and on the abstract of locations the volume and page where posted must be entered. The volume and page should also be noted on the back of the certificate of location.

6th. *Homestead entries* are to be posted same as cash entries according to rule four, noting in the margin the word "Home."

7th. Where a certificate of purchase or location calls for two or more tracts in different sections, the tracts in each section must be entered in the appropriate place, referring to the section where the entire sale is posted. For example: if the certificate calls for the N. W. $\frac{1}{4}$ of the N. W. $\frac{1}{4}$ of section 6, T. 40, R. 9 W., and the N. E. $\frac{1}{4}$ of Sec. 1, T. 40, R. 10 W., and the E. $\frac{1}{2}$ of the S. E. $\frac{1}{4}$ of Sec. 36, T. 41 N., R. 10 W., it must be entered thus: N. W. $\frac{1}{4}$ of N. W. $\frac{1}{4}$ of Sec. 6, T. 40, R. 9 W., sold—see Sec. 36, T. 41 N., R. 10 W. N. E. $\frac{1}{4}$ of Sec. 1, T. 40, R. 10 W., sold—see Sec. 36, T. 41 N., R. 10 W., showing that said tracts had been disposed of with part of Sec. 36, T. 41 N., R. 10 W., where the entire entry must be posted.

8th. Whenever, in posting a sale or location, it is found to conflict with a prior sale or location, or selection, or with a pre-emption declaration which has not expired, before suspending the same the certificate for the prior sale or location must be examined to see that it has been properly posted, and in order that it may be ascertained with certainty whether or not conflict actually exists.

9th. Where a tract of land has been taken in whole or in part with Revolutionary Bounty-Land Scrip, the entry in the Tract Books must show the amount paid in cash and the amount covered by scrip, giving the number of the scrip, as the case may be.

10th. Where a Military Bounty-Land Warrant or Agricultural Scrip is located on a tract, the area of which is greater than the quantity

called for on the face of the warrant or scrip, it must be seen that the excess in area has been paid for, and the entry in Tract Books must show the excess and amount paid therefor and the number of the Receiver's receipt for said payment. The number of excess receipt must be noted on the certificate of location accompanying the warrant or scrip.

11th. Where a Military Bounty-Land Warrant or Agricultural College Scrip is located on a tract of land, the price of which is \$2 50 per acre, or more than the ordinary minimum, requiring an additional cash payment, the Tract Books must show that said payment has been made, giving the amount paid and the number of the Receiver's receipt therefor.*

12th. Where an entry or location is made under the Pre-emption laws, in posting the same in the Tract Books, the act under which the Pre-emption was made must be noted at the end of the entry, thus: "Pre-emption Act, 1841, &c."

13th. After a month's returns have been posted, the Register's Abstract or Certificates must be carefully compared with the entries made in the Tract Books, in order that there may be no errors made by posting in the wrong section, town, or range.

14th. Whenever it shall become necessary to cancel homestead entries for cause *other than voluntary relinquishment or prior disposal of the tract*, the district officer must be advised that the entry is held for cancellation, and instructed to notify the parties in interest that they will be allowed sixty days from service of notice within which to file an appeal.

At the expiration of the time allowed, the district officers will be required to make a prompt report, showing what action the parties may have taken.

If an appeal is filed within the time allowed, the papers in the case must be submitted to the Hon. Secretary of the Interior for review and action.

If no appeal is taken, the entry must be noted as cancelled upon the Tract Books and upon the entry papers, of which fact the district officers must be promptly advised.

15th All pre-emption entries or locations must have indorsed on the certificate, *in red ink, not in pencil*:

1. Date of filing, date of settlement, and number of declaratory statement showing the tracts filed for.

2. Offered or unoffered.

3. Conflict or no conflict; if there should be a conflict, note what it conflicts with.

4. Discrepancies and other causes of suspension should be noted on the certificate.

5. Note date of examination, with the initials of the gentlemen making the same.

6. After docketing the case in Posting Division, the papers must be referred to the Pre-emption Division for examination.

16th. Where an entry is suspended for any cause whatever, the cause of suspension must be plainly noted in red ink on the back of the certificate of purchase, and the latter then placed with the suspended cases, which, at the close of the posting for the month, should be placed together in a separate bundle, indorsed "*Suspended entries*," giving

*See No. 579, par. 32.

the name of the Land-Office and the *month* and *year* in which they were made, when they should be taken up, docketed, and promptly placed in train of adjustment.

17th. All posted certificates, free from conflict, should be duly and promptly referred to the Recorder for patenting, and an abstract kept of such reference, with dates.

18th. The abstract of sales, and register of receipts when posted, should be placed together on the appropriate file; before doing so, however, the date when posted, and the initials of the clerk by whom posted, should be indorsed thereon.

19th. In examining and posting Returns *in exact chronological order* (such order never to be departed from), the Bookkeepers must test, in detail, the accuracy not only of the *quantity* in *acres*, and the *sums* paid, but must test the *totals*, noting results at foot of Returns; and where an error is discovered, it must be brought promptly to the notice of the accountant.

WILEIS DRUMMOND, *Commissioner*.

GENERAL LAND-OFFICE, July 22, 1872.

No. 654.]

FILING DUPLICATE RECEIVER'S RECEIPTS.

DEPARTMENT OF THE INTERIOR,

GENERAL LAND OFFICE,

February 7, 1871.

TO THE BOOK-KEEPERS AND POSTING CLERKS OF THE GENERAL LAND-OFFICE.

GENTLEMEN :—In view of the frequent occurrence of patents having been transmitted to the local officers, when they should have been sent to the persons who had previously filed here the duplicate therefor, and in order hereafter as far as possible to prevent such erroneous transmissions,

It is hereby directed that such clerks as may have cases in hand at the time of the filing of the duplicate, shall indorse upon the brief of the case, in red ink, the office number and date of the letter in which they may have been received, together with the name and address of the party or parties filing the same.

It is also directed, in order that patents may be transmitted to the proper district office for entries or locations made at an office discontinued or sub-divided, and the lands now subject to sale at a new and different office; that the book-keeper, in posting said case or cases, be required to place on the brief, under the name of the office at which the entry or location was made, the name of the district land-office in which the land described is now situated.

I am, very respectfully, your obedient servant,

W. W. CURTIS, *Acting Commissioner*.

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[PUBLIC—No. 162.]

An act to repeal timber-culture laws, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That an act entitled "An act to amend an act entitled 'An act to encourage the growth of timber on the Western prairies,' approved June fourteenth, eighteen hundred and seventy eight, and all laws supplementary thereto or amendatory thereof, be, and the same are hereby, repealed: *Provided*, That this repeal shall not affect any valid rights heretofore accrued or accruing under said laws, but all bona fide claims lawfully initiated before the passage of this act may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed: *And provided further*, That the following words of the last clause of section two of said act, namely, "That not less than twenty-seven hundred trees were planted on each acre," are hereby repealed: *And provided further*, That in computing the period of cultivation the time shall run from the date of the entry, if the necessary acts of cultivation were performed within the proper time: *And provided further*, That the preparation of the land and the planting of trees shall be construed as acts of cultivation, and the time authorized to be so employed and actually employed shall be computed as a part of the eight years of cultivation required by statute: *Provided*, That any person who has made entry of any public lands of the United States under the timber-culture laws, and who has for a period of four years in good faith complied with the provisions of said laws and who is an actual bona fide resident of the State or Territory in which said land is located shall be entitled to make final proof thereto, and acquire title to the same, by the payment of one dollar and twenty five cents per acre for such tract, under such rules and regulations as shall be prescribed by the Secretary of the Interior, and registers and receivers shall be allowed the same fees and compensation for final proofs in timber culture entries as is now allowed by law in homestead entries: *And provided further*, That no land acquired under the provisions of this act shall in any event become liable to the satisfaction of any debt or debts contracted prior to the issuing of the final certificate therefor.

SEC. 2. That an act to provide for the sale of desert lands in certain States and Territories, approved March third, eighteen hundred and seventy-seven, is hereby amended by adding thereto the following sections:

SEC. 4. That at the time of filing the declaration hereinbefore required the party shall also file a map of said land, which shall exhibit plan showing the mode of contemplated irrigation, and which plan shall be sufficient to thoroughly irrigate and reclaim said land, and pare it to raise ordinary agricultural crops, and shall also show source of the water to be used for irrigation and reclamation. Persons entering or proposing to enter separate sections, or fractional sections, of desert lands may associate together in the con-

struction of canals and ditches for irrigating and reclaiming all of said tracts, and may file a joint map or maps showing their plan of internal improvements.

SEC. 5. That no land shall be patented to any person under this act unless he or his assignors shall have expended in the necessary irrigation, reclamation, and cultivation thereof, by means of main canals and branch ditches, and in permanent improvements upon the land, and in the purchase of water rights for the irrigation of the same, at least three dollars per acre of whole tract reclaimed and patented in the manner following: Within one year after making entry for such tract of desert land as aforesaid the party so entering shall expend not less than one dollar per acre for the purposes aforesaid: and he shall in like manner expend the sum of one dollar per acre during the second and also during the third year thereafter, until the full sum of three dollars per acre is so expended. Said party shall file during each year with the register proof, by the affidavits of two or more credible witnesses, that the full sum of one dollar per acre has been expended in such necessary improvements during such year, and the manner in which expended, and at the expiration of the third year a map or plan showing the character and extent of such improvements. If any party who has made such application shall fail during any year to file the testimony aforesaid the lands shall revert to the United States, and the twenty-five cents advanced payment shall be forfeited to the United States, and the entry shall be cancelled. Nothing herein contained shall prevent a claimant from making his final entry and receiving his patent at an earlier date than hereinbefore prescribed, provided that he then makes the required proof of reclamation to the aggregate extent of three dollars per acre: *Provided*, That proof be further required of the cultivation of one-eighth of the land.

SEC. 6. That this act shall not affect any valid rights heretofore accrued under said act of March third, eighteen hundred and seventy-seven, but all bona fide claims heretofore lawfully initiated may be perfected, upon due compliance with the provisions of said act, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests as if this act had not been passed; or said claims, at the option of the claimant, may be perfected and patented under the provisions of said act, as amended by this act, so far as applicable; and all acts and parts of acts in conflict with this act are hereby repealed.

SEC. 7. That at any time after filing the declaration, and within the period of four years thereafter, upon making satisfactory proof to the register and the receiver of the reclamation and cultivation of said land to the extent and cost and in the manner aforesaid, and substantially in accordance with the plans herein provided for, and that he or she is a citizen of the United States, and upon payment to the receiver of the additional sum of one dollar per acre for said land, a patent shall issue therefor to the applicant or his assigns; but no person or association of persons shall hold by assignment or otherwise prior to the issue of patent, more than three hundred and twenty acres of such arid or desert lands but this section shall not apply to entries made or initiated prior to the approval of this act. *Provided, however*, That additional proofs may be required at any time within the period prescribed by law, and that the claims or entries made under this or any preceding act shall be subject to contest, as provided by the law, relating to homestead cases, for illegal

inception, abandonment, or failure to comply with the requirements of law, and upon satisfactory proof thereof shall be canceled, and the lands, and moneys paid therefor, shall be forfeited to the United States.

SEC. 8. That the provisions of the act to which this is an amendment, and the amendments thereto, shall apply to and be in force in the State of Colorado, as well as the States named in the original act; and no person shall be entitled to make entry of desert land except he be a resident citizen of the State or Territory in which the land sought to be entered is located."

SEC. 3. That section twenty-two hundred and eighty-eight of the Revised Statutes be amended so as to read as follows:

SEC. 2288. Any bona fide settler under the pre-emption, homestead, or other settlement law shall have the right to transfer, by warranty against his own acts, any portion of his claim for church, cemetery, or school purposes, or for the right of way of railroads, canals, or ditches for irrigation or drainage across it; and the transfer for such public purposes shall in no way vitiate the right to complete and perfect the title to his claim."

SEC. 4. That chapter four of title thirty-two, excepting sections twenty-two hundred and seventy-five, twenty-two hundred and seventy-six, twenty-two hundred and eighty-six, of the Revised Statutes of the United States, and all other laws allowing pre-emption of the public lands of the United States, are hereby repealed, but all bona fide claims lawfully initiated before the passage of this act, under any of said provisions of law so repealed, may be perfected upon due compliance with law, in the same manner, upon the same terms and conditions, and subject to the same limitations, forfeitures, and contests, as if this act had not been passed.

SEC. 5. That sections twenty two hundred and eighty-nine and twenty-two hundred and ninety, in said chapter numbered five of the Revised Statutes, be, and the same are hereby, amended, so that they shall read as follows:

SEC. 2289. Every person who is the head of a family, or who has arrived at the age of twenty-one years, and is a citizen of the United States, or who has filed his declaration of intention to become such, as required by the naturalization laws, shall be entitled to enter one-quarter section, or a less quantity, of unappropriated public lands, to be located in a body in conformity to the legal subdivisions of the public lands; but no person who is the proprietor of more than one hundred and sixty acres of land in any State or Territory, shall acquire any right under the homestead law. And every person owning and residing on land may, under the provisions of this section, enter other land lying contiguous to his land, which shall not, with the land so already owned and occupied, exceed in the aggregate one hundred and sixty acres.

SEC. 2290. That any person applying to enter land under the preceding section shall first make and subscribe before the proper officer and file in the proper land office an affidavit that he or she is the head of a family, or is over twenty-one years of age, and that such application is honestly and in good faith made for the purpose of actual settlement and cultivation, and not for the benefit of any other person, persons or corporation, and that he or she will faithfully and honestly endeavor to comply with all the requirements of law as to settlement, residence, and cultivation necessary to acquire title to the land applied for; that he or she is not acting as agent of any person,

corporation, or syndicate in making such entry, nor in collusion with any person, corporation, or syndicate to give them the benefit of the land entered, or any part thereof, or the timber thereon; that he or she does not apply to enter the same for the purpose of speculation, but in good faith to obtain a home for himself, or herself; and that he or she has not directly or indirectly made, and will not make, any agreement or contract in any way or manner, with any person or persons, corporation or syndicate whatsoever, by which the title which he or she might acquire from the Government of the United States should inure, in whole or in part, to the benefit of any person, except himself, or herself, and upon filing such affidavit with the register or receiver on payment of five dollars when the entry is of not more than eighty acres, and on payment of ten dollars when the entry is for more than eighty acres, he or she shall thereupon be permitted to enter the amount of land specified."

SEC. 6. That section twenty-three hundred and one of the Revised Statutes be amended so as to read as follows:

"SEC. 2301. Nothing in this chapter shall be so construed as to prevent any person who shall hereafter avail himself of the benefits of section twenty-two hundred and eighty nine from paying the minimum price for the quantity of land so entered at any time after the expiration of fourteen calendar months from the date of such entry, and obtaining a patent therefor, upon making proof of settlement and of residence and cultivation for such period of fourteen calendar months." And the provision of this section shall apply to lands on the ceded portion of the Sioux Reservation by act approved March second, eighteen hundred and eighty-nine, in South Dakota, but shall not relieve said settlers from any payments now required by law.

SEC. 7. That whenever it shall appear to the Commissioner of the General Land Office that a clerical error has been committed in the entry of the public lands such entry may be suspended upon proper notification to the claimant through the local land office, until the error has been corrected; and all entries made under the preemption, homestead, desert-land, or timber-culture laws, in which final proof and payment may have been made and certificates issued, and to which there are no adverse claims originating prior to final entry and which have been sold or incumbered prior to the first day of March, eighteen hundred and eighty-eight, and after final entry, to bona-fide purchasers, or incumbrancers, for a valuable consideration, shall unless upon an investigation by a Government Agent, fraud on the part of the purchaser has been found, be confirmed and patented upon presentation of satisfactory proof to the Land Department of such sale or incumbrance: *Provided*, That after the lapse of two years from the date of the issuance of the receiver's receipt upon the final entry of any tract of land under the homestead, timber-culture, desert-land, or pre-emption laws, or under this act, and when there shall be no pending contest or protest against the validity of such entry, the entryman shall be entitled to a patent conveying the land by him entered, and the same shall be issued to him; but this proviso shall not be construed to require the delay of two years from the date of said entry before the issuing of a patent therefor.

SEC. 8. That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of

the issuance of such patents. And in the States of Colorado, Montana, Idaho, North Dakota and South Dakota, Wyoming, and in the District of Alaska and the gold and silver regions of Nevada, and the Territory of Utah, in any criminal prosecution or civil action by the United States for a trespass on such public lands or to recover timber or lumber cut thereon, it shall be a defense if the defendant shall show that the said timber was so cut or removed from the timber lands for use in such State or Territory by a resident thereof for agricultural, mining, manufacturing, or domestic purposes, and has not been transported out of the same; but nothing herein contained shall apply to operate to enlarge the rights of any railway company to cut timber on the public domain: *Provided*, That the Secretary of the Interior may make suitable rules and regulations to carry out the provisions of this section.

SEC. 9. That hereafter no public lands of the United States, except abandoned military or other reservations, isolated and disconnected fractional tracts authorized to be sold by section twenty-four hundred and fifty-five of the Revised Statutes, and mineral and other lands the sale of which at public auction has been authorized by acts of Congress of a special nature having local application, shall be sold at public sale.

SEC. 10. That nothing in this act shall change, repeal, or modify any agreements or treaties made with any Indian tribes for the disposal of their lands, or of land ceded to the United States to be disposed of for the benefit of such tribes, and the proceeds thereof to be placed in the Treasury of the United States; and the disposition of such lands shall continue in accordance with the provisions of such treaties or agreements, except as provided in section 5 of this act.

SEC. 11. That until otherwise ordered by Congress lands in Alaska may be entered for town-site purposes, for the several use and benefit of the occupants of such town sites, by such trustee or trustees as may be named by the Secretary of the Interior for that purpose, such entries to be made under the provisions of section twenty-three hundred and eighty-seven of the Revised Statutes as near as may be; and when such entries shall have been made the Secretary of the Interior shall provide by regulation for the proper execution of the trust in favor of the inhabitants of the town site, including the survey of the land into lots, according to the spirit and intent of said section twenty-three hundred and eighty-seven of the Revised Statutes, whereby the same result would be reached as though the entry had been made by a county judge and the disposal of the lots in such town site and the proceeds of the sale thereof had been prescribed by the legislative authority of a State or Territory: *Provided*, That no more than six hundred and forty acres shall be embraced in one townsite entry.

SEC. 12. That any citizen of the United States twenty-one years of age, and any association of such citizens, and any corporation incorporated under the laws of the United States, or of any State or Territory of the United States now authorized by law to hold lands in the Territories now or hereafter in possession of and occupying public lands in Alaska for the purpose of trade or manufactures, may purchase not exceeding one hundred and sixty acres, to be taken as near as practicable in a square form, of such land at two dollars and fifty cents per acre: *Provided*, That in case more than one person, association, or corporation shall claim the same tract of land the

person, association, or corporation having the prior claim by reason of possession and continued occupation shall be entitled to purchase the same; but the entry of no person, association, or corporation shall include improvements made by or in possession of another prior to the passage of this act.

SEC. 13. That it shall be the duty of any person, association, or corporation entitled to purchase land under this act to make an application to the United States marshal, ex officio surveyor-general of Alaska, for an estimate of the cost of making a survey of the lands occupied by such person, association, or corporation, and the cost of the clerical work necessary to be done in the office of the said United States marshal, ex officio surveyor-general; and on the receipt of such estimate from the United States marshal, ex officio surveyor-general, the said person, association, or corporation shall deposit the amount in a United States depository, as is required by section numbered twenty-four hundred and one, Revised Statutes, relating to deposits for surveys.

That on the receipt by the United States marshal, ex-officio surveyor-general, of the said certificates of deposit, he shall employ a competent person to make such survey, under such rules and regulations as may be adopted by the Secretary of the Interior, who shall make his return of his field notes and maps to the office of the said United States marshal, ex officio surveyor-general; and the said United States marshal, ex officio surveyor-general, shall cause the said field notes and plats of such survey to be examined, and, if correct, approve the same, and shall transmit certified copies of such maps and plats to the office of the Commissioner of the General Land Office.

That when the said field notes and plats of said survey shall have been approved by the said Commissioner of the General Land Office, he shall notify such person, association, or corporation, who shall then, within six months after such notice, pay to the said United States marshal, ex officio surveyor-general, for such land, and patent shall issue for the same.

SEC. 14. That none of the provisions of the last two preceding sections of this act shall be so construed as to warrant the sale of any lands belonging to the United States which shall contain coal or the precious metals, or any town site, or which shall be occupied by the United States for public purposes, or which shall be reserved for such purposes, or to which the natives of Alaska have prior rights by virtue of actual occupation, or which shall be selected by the United States Commissioner of Fish and Fisheries on the island of Kadiak and Afognak for the purpose of establishing fish-culture stations. And all tracts of land not exceeding six hundred and forty acres in any one tract now occupied as missionary stations in said district of Alaska are hereby excepted from the operation of the last three preceding sections of this act. No portion of the islands of the Pribylov Group or the Seal Islands of Alaska shall be subject to sale under this act; and the United States reserves, and there shall be reserved in all patents issued under the provisions of the last two preceding sections the right of the United States to regulate the taking of salmon and to do all things necessary to protect and prevent the destruction of salmon in all the waters of the lands granted frequented by salmon.

SEC. 15. That until otherwise provided by law the body of lands known as Annette Islands, situated in Alexander Archipelago in

Southeastern Alaska, on the north side of Dixon's entrance, be, and the same is hereby, set apart as a reservation for the use of the Metlakatla Indians, and those people known as Metlakatlans who have recently emigrated from British Columbia to Alaska, and such other Alaskan natives as may join them, to be held and used by them in common, under such rules and regulations, and subject to such restrictions, as may be prescribed from time to time by the Secretary of the Interior.

SEC. 16. That town-site entries may be made by incorporated towns and cities on the mineral lands of the United States, but no title shall be acquired by such towns or cities to any vein of gold, silver, cinnabar, copper, or lead, or to any valid mining claim or possession held under existing law. When mineral veins are possessed within the limits of an incorporated town or city, and such possession is recognized by local authority or by the laws of the United States, the title to town lots shall be subject to such recognized possession and the necessary use thereof and when entry has been made or patent issued for such town sites to such incorporated town or city, the possessor of such mineral vein may enter and receive patent for such mineral vein, and the surface ground appertaining thereto: *Provided*, That no entry shall be made by such mineral-vein claimant for surface ground where the owner or occupier of the surface ground shall have had possession of the same before the inception of the title of the mineral-vein applicant.

SEC. 17. That reservoir sites located or selected and to be located and selected under the provisions of "An act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and eighty-nine, and for other purposes," and amendments thereto, shall be restricted to and shall contain only so much land as is actually necessary for the construction and maintenance of reservoirs; excluding so far as practicable lands occupied by actual settlers at the date of the location of said reservoirs and that the provision of "An Act making appropriations for sundry civil expenses of the Government for the fiscal year ending June thirtieth, eighteen hundred and ninety-one, and for other purposes," which reads as follows, viz: "No person who shall after the passage of this act enter upon any of the public lands with a view to occupation, entry, or settlement under any of the land laws shall be permitted to acquire title to more than three hundred and twenty acres in the aggregate under all said laws," shall be construed to include in the maximum amount of lands the title to which is permitted to be acquired by one person only agricultural lands and not to include lands entered or sought to be entered under mineral land laws.

SEC. 18. That the right of way through the public lands and reservations of the United States is hereby granted to any canal or ditch company formed for the purpose of irrigation and duly organized under the laws of any State or Territory, which shall have filed, with the Secretary of the Interior a copy of its articles of incorporation, and due proofs of its organization under the same, to the extent of the ground occupied by the water of the reservoir and of the canal and its laterals, and fifty feet on each side of the marginal limits thereof; also the right to take, from the public lands adjacent to the line of the canal or ditch, material, earth, and stone necessary for the construction of such canal or ditch: *Provided*, That no such right of way shall be so located as to interfere with the proper occupation

by the Government of any such reservation, and all maps of location shall be subject to the approval of the Department of the Government having jurisdiction of such reservation, and the privilege herein granted shall not be construed to interfere with the control of water for irrigation and other purposes under authority of the respective States or Territories.

SEC. 19. That any canal or ditch company desiring to secure the benefits of this act shall, within twelve months after the location of ten miles of its canal, if the same be upon surveyed lands, and if upon unsurveyed lands, within twelve months after the survey thereof by the United States, file with the register of the land office for the district where such land is located a map of its canal or ditch and reservoir; and upon the approval thereof by the Secretary of the Interior the same shall be noted upon the plats in said office, and thereafter all such lands over which such rights of way shall pass shall be disposed of subject to such right of way. Whenever any person or corporation, in the construction of any canal, ditch, or reservoir, injures or damages the possession of any settler on the public domain, the party committing such injury or damage shall be liable to the party injured for such injury or damage.

SEC. 20. That the provisions of this act shall apply to all canals, ditches, or reservoirs, heretofore or hereafter constructed, whether constructed by corporations, individuals, or association of individuals on the filing of the certificates and maps herein provided for. If such ditch, canal, or reservoir, has been or shall be constructed by an individual or association of individuals, it shall be sufficient for such individual or association of individuals to file with the Secretary of the Interior, and with the register of the land office where said land is located, a map of the line of such canal, ditch, or reservoir, as in case of a corporation, with the name of the individual owner or owners thereof, together with the articles of association, if any there be. Plats heretofore filed shall have the benefits of this act from the date of their filing, as though filed under it: *Provided*, That if any section of said canal or ditch shall not be completed within five years after the location of said section, the rights herein granted shall be forfeited as to any uncompleted section of said canal, ditch, or reservoir, to the extent that the same is not completed at the date of the forfeiture.

SEC. 21. That nothing in this act shall authorize such canal or ditch company to occupy such right of way except for the purpose of said canal or ditch, and then only so far as may be necessary for the construction, maintenance, and care of said canal or ditch.

SEC. 22. That the section of land reserved for the benefit of the Dakota Central Railroad Company on the west bank of the Missouri River, at the mouth of Bad River, as provided by section sixteen of "An act to divide a portion of the reservation of the Sioux Nation of Indians in Dakota into separate reservations and to secure the relinquishment of the Indian title to the remainder and for other purposes," approved March second, eighteen hundred and eighty-nine, shall be subject to entry under the town-site law only.

SEC. 23. That in all cases where second entries of land on the Osage Indian trust and diminished reserve lands in Kansas, to which at the time there were no adverse claims, have been made and the law complied with as to residence and improvement, said entries be, and the same are hereby, confirmed, and in all cases where persons were actual settlers and residing upon their claims upon said Osage Indian trust and diminished reserve lands in the State of Kansas on

the ninth day of May, eighteen hundred and seventy-two and who have made subsequent pre-emption entries either upon public or upon said Osage Indian trust and diminished reserve lands, upon which there were no legal prior adverse claims at the time, and the law complied with as to settlement, said subsequent entries be, and the same are hereby, confirmed.

SEC. 24 That the President of the United States may, from time to time, set apart and reserve, in any State or Territory having public land bearing forests, in any part of the public lands wholly or in part covered with timber or undergrowth, whether of commercial value or not, as public reservations, and the President shall, by public proclamation, declare the establishment of such reservations and the limits thereof.

Approved, March 3, 1891.

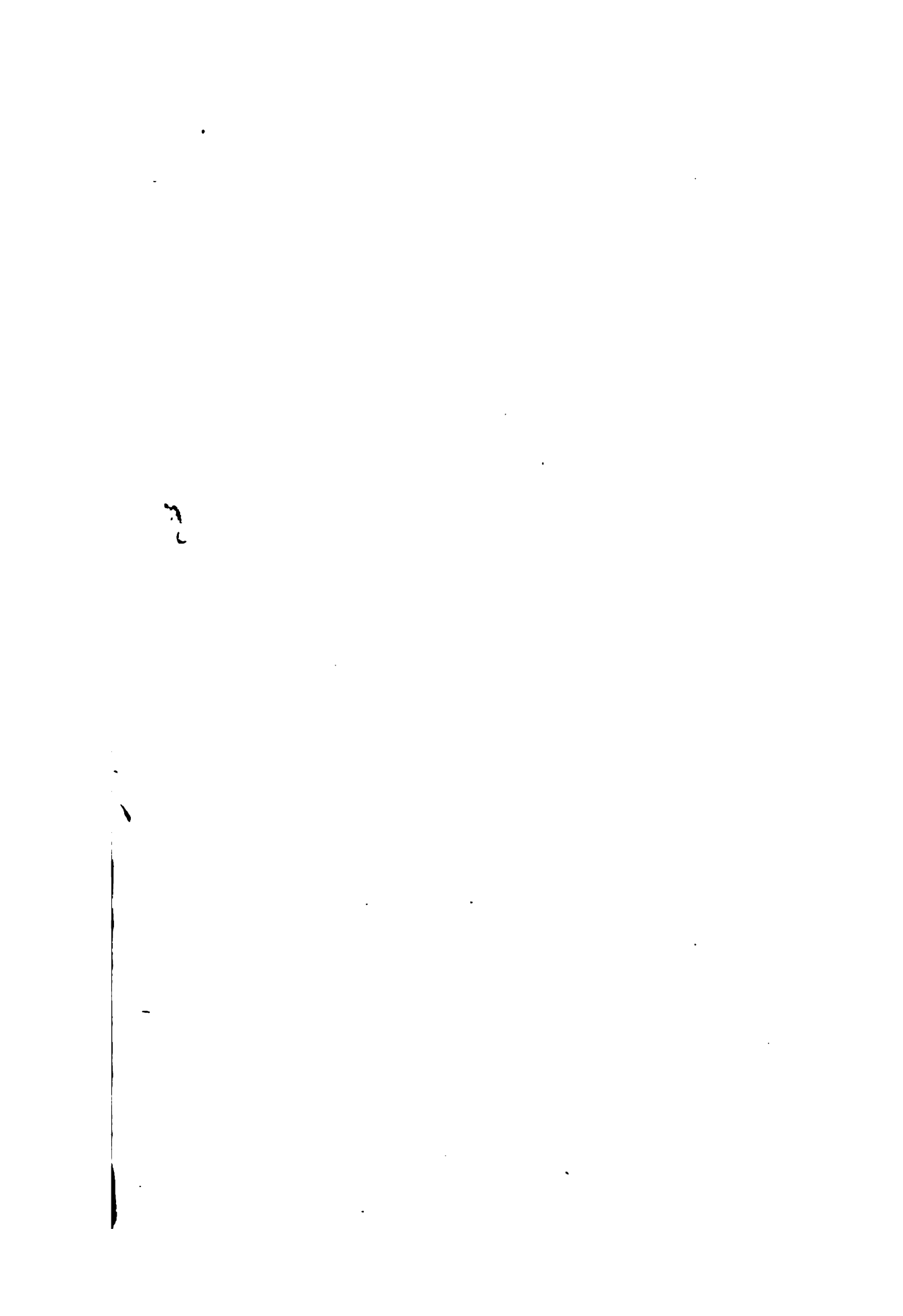
[PUBLIC—No. 160.]

An act to amend section eight of an act approved March third, eighteen hundred and ninety-one; entitled "An act to repeal timber culture laws and for other purposes."

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That sections eight of an act entitled "An act to repeal timber culture laws, and for other purposes," approved March third, eighteen hundred and ninety-one, be and the same is hereby amended so as to read as follows:

"SEC. 8. That suits by the United States to vacate and annul any patent heretofore issued shall only be brought within five years from the passage of this act, and suits to vacate and annul patents hereafter issued shall only be brought within six years after the date of the issuance of such patents. And in the States of Colorado, Montana, Idaho, North Dakota, and South Dakota, Wyoming, and the District of Alaska, and the gold and silver regions of Nevada and the Territory of Utah in any criminal prosecution or civil action by the United States for a trespass on such public timber lands or to recover timber or lumber cut thereon it shall be a defense if the defendant shall show that the said timber was so cut or removed from the timber lands for use in such State or Territory by a resident thereof for agricultural, mining, manufacturing or domestic purposes under rules and regulations made and prescribed by the Secretary of the Interior and has not been transported out of the same, but nothing herein contained shall operate to enlarge the rights of any railway company to cut timber on the public domain, provided that the Secretary of the Interior may make suitable rules and regulations to carry out the provisions of this act, and he may designate the sections or tracts of land where timber may be cut, and it shall not be lawful to cut or remove any timber except as may be prescribed by such rules and regulations, but this act shall not operate to repeal the act of June third, eighteen hundred and seventy-eight, providing for the cutting of timber on mineral lands.

Approved, March 8, 1891



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